

Legislative Affairs for Coastal North Carolina Real Estate & Building Industries



February 23, 2010

U.S. Environmental Protection Agency  
Water Docket, Mail code: 4203M  
1200 Pennsylvania Ave., NW.  
Washington, DC 20460

Email Submission [ow-docket@epa.gov](mailto:ow-docket@epa.gov)

RE: [Attention Docket ID No. EPA-HQ-OW-2009-0817] Comments on EPA's Proposed Stormwater Rulemaking

Dear Docket Officer:

The Business Alliance for a Sound Economy (BASE) is an organization of trade associations formed to take collaborative action on issues of concern to their broad membership engaged in residential and commercial real estate sales, land development, economic development, finance, property management and leasing. BASE represents the approximately 18,000 members of the Brunswick County Home Builders Association, the Brunswick County Landowners Association, the Topsail Island Association of REALTORS®, the Pitt County Economic Development Partnership and the Wilmington-Cape Fear Home Builders Association.

BASE would like to submit the following comments in response to EPA's request for additional Stakeholder Input on the Proposed Stormwater Rulemaking.

We are extremely concerned about EPA's current stormwater rulemaking and the significant impacts the proposed rules will have on the residential and commercial construction industry. More specifically we are concerned with the new source performance standards (NSPS) as noted in the proposed rules.

BASE would argue that the residential and commercial construction industry already has a multitude of policies, procedures and regulatory statutes with which to comply before commencing any type of construction procedures on-site. We would like to note that currently in North Carolina almost every construction-related project is sheltered under the current North Carolina General Permit (NCG010000). There are 7 regional

offices located across the state that issue pollution control permits, monitor permit compliance, evaluate environmental quality and carry out enforcement actions for violations of environmental regulations. There are more than 22 stormwater management areas and programs that are currently operational and working in North Carolina. Out of the 100 counties in North Carolina every one of them has some sort of stormwater program designation in place.

*(Referenced on the attached map labeled Exhibit A)* Many of these permitting programs require a clear description of the long-term monitoring and maintenance responsibilities for stormwater control facilities.

These responsibilities are required of the developer as well as the lot purchaser subsequent to the Homeowners Association being formed and then taking control of these facilities.

BASE would argue that EPA's rule does not address the life cycle of a permit, much less lend any type of clear guidelines on how the rules would apply in the course of a permit. Typically in North Carolina, stormwater permits are issued for a certain period of time - 10 years for most high density projects and less than that for low density projects. At some point along the way almost every stormwater permit usually goes through a "transfer of ownership" during its life-cycle. BASE would argue that the proposed EPA rules do not offer any type of clear guidance depicting who would be in charge of the performance measurements once a permit expires or the subsequent transfer to another party such as a Homeowners Association. It is also very evident in the rules that they do not include any type of sampling or measurements guidelines, so one must assume that the each individual state will have to take on this responsibility. Therefore, BASE would argue that the following questions need to be resolved with more specific clarity.

*Is monitoring and reporting the responsibility of the financially responsible party, a government agent or a third party consultant? And for how long – is it the life of the permit and does it run with the permit or does it run with the owner or original permittee? How are multi-phased developments handled? Since these developments usually have numerous permits for stormwater conveyance.*

We would further argue that the proposed rule does not specifically deal with "sheet flow" applications as well as "diffuse flow" situations. Developments that invoke some type of "sheet flow" or "diffuse flow" application such as level spreaders, pre-form scour holes or other energy dissipating devices certainly do not meet the clear definition of a point source discharge. BASE would argue that the following questions need to be answered with respect to following questions.

*Will there be a baseline measurement created for the private sector to use so that any type of performance measurement can actually be rendered? How does "sheet flow" and "diffuse" applications work with the new performance guidelines, specifically to silt and sedimentation and turbidly units? Typically projects that utilize "sheet flow" applications are linear in nature and do not have direct points of discharge: case in point would be a low impact development site (LID).*

*How about a site that is bisected by a creek, ditch, etc. that carries sediment from another property? Are you required to monitor upstream NTU to determine a baseline? How are sites to be ranked on cumulative impacts from other properties?*

It is clear that the proposed rules will likely mean frequent sampling and lab reporting, as well as other costly expenditures. However it is also clear that yet once again these proposed rules ignore the entire balance of the stormwater system by placing further restrictions on one segment of the economy and not using a holistic approach to stormwater management. It is very apparent that to meet the proposed limits of 280 NTU's many projects will be forced to use proprietary measures and BMP methods that sometimes are limited in their capacity as well as controversial in nature.

The economic downturn has greatly impacted our overall membership and EPA's new Effluent Limitation Guidelines (ELG) will certainly add significant costs to the residential and commercial construction industry that we cannot afford to absorb at this critical time. We urge the agency to refrain from placing any more onerous requirements on our industry as we attempt to rebound from the worst recession in decades.

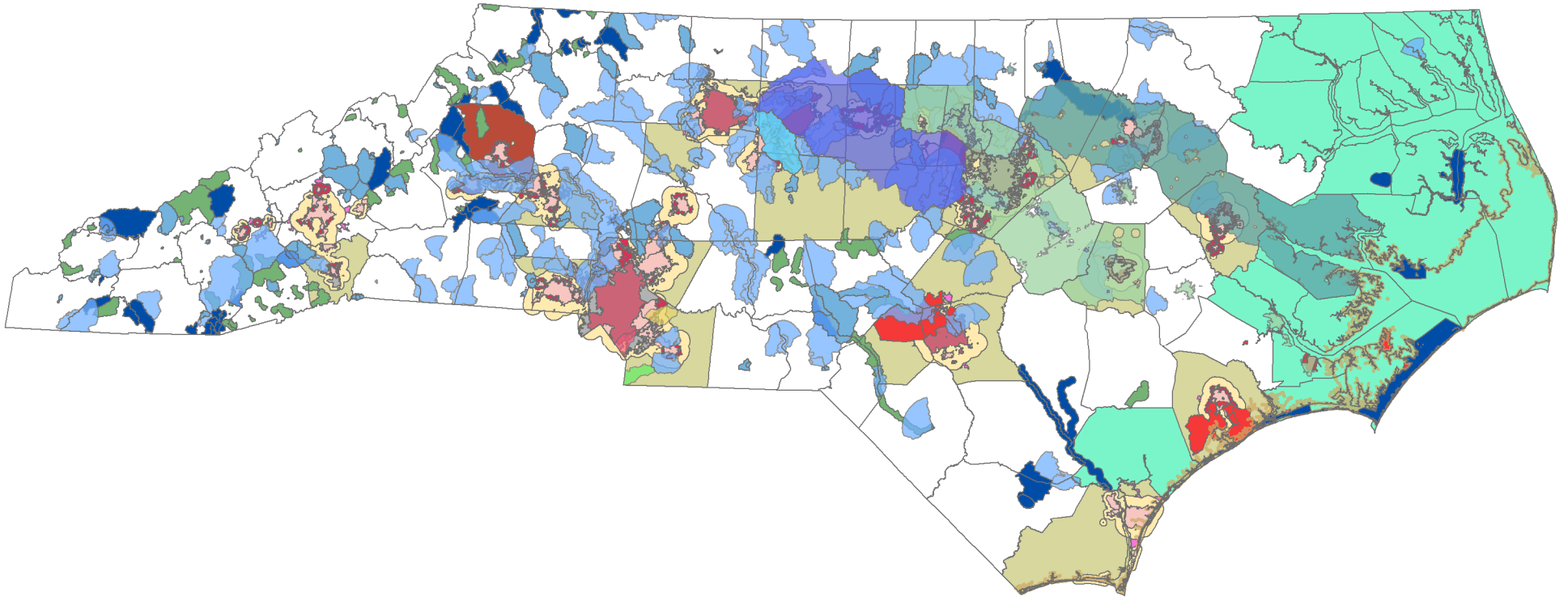
Thank you, in advance, for your consideration of our comments. If there are any questions regarding my comments, please feel free to call our Governmental Affairs Representatives at (910)799-2611.

Sincerely,

A handwritten signature in black ink, appearing to read 'Craig Stevens', with a long horizontal flourish extending to the right.

Craig Stevens  
Chairman

# Stormwater Management Program Areas in North Carolina



## Legend

- Neuse NSW Strategy Area
- Tar-Pamlico NSW Strategy Area
- Goose Creek Watershed
- Jordan Reservoir Watershed
- Randleman Reservoir Watershed
- Sixmile Creek Watershed
- Waxhaw Creek Watershed
- Counties
- Water Supply Watersheds
- ORW
- HQW (non-coastal)
- SA (Shellfish) Areas
- NPDES-Exempt Phase II Municipalities + ETJs
- NPDES Permit - Phase I MS4/Military
- NPDES Permitted Ph II MS4/Co
- NPDES Permitted Phase I MS4
- NPDES Permitted Phase I/II city ETJ
- NPDES Permitted Phase II MS4
- Phase II MSIs (from 2008 Boundaries)
- Designated Phase II Municipalities
- Urbanizing Areas (2000 Census)
- Phase II Tipped Counties (Post-Construction)
- Coastal Stormwater (CAMA Counties)

Post-Construction Areas per Session Law 2006-246

