

## **National Association of Home Builders (NAHB) Environmental Issues Talking Points**

- NAHB is strongly supportive of Administrator Pruitt, and we look forward to working with him and his staff to implement a pragmatic approach to environmental regulation.
- Residential construction is one of the most heavily regulated industries in the country, as it is one of the few industries in which a government-issued permit is typically required for each unit of production.
- Builders and developers are often subject to a layering effect, where numerous regulations are stacked on top of one another. In some areas of the country, 10 or more government approvals or reviews are required before land can be developed.
- The fact that, on average, nearly 25% of the cost of a single-family home is attributable to government regulation is particularly troubling.
- We urge EPA, in carrying out President Trump's regulatory streamlining directives, to focus not only on new rules but also on opportunities to revoke or revise existing rules.
- NAHB believes it is tremendously important that EPA consider the impact of federal regulations upon existing state and local government requirements as well as small businesses.
- In fact, the overwhelming majority of NAHB's members are small businesses. Over 90% percent of members meet the federal definition of a "small entity" as defined by the U.S. Small Businesses Administration.
- Here, we discuss three key environmental issues facing the home building industry – waters of the U.S. (WOTUS), the Lead Rule and Stormwater Regulation.

## Talking Points on EPA's Withdrawal of the Clean Water Rule (WOTUS)

### ***Background***

- On the topic of WOTUS, we want to thank Administrator Pruitt and President Trump for the regulatory relief they will bring to the nation's builders and developers by fixing the flawed WOTUS rule.
- The President's Executive Order is a positive first step toward reworking the regulation and implementing a more sensible rule.
- Under Administrator Pruitt's leadership, EPA and the Corps have already signaled their intent to fix WOTUS, and we want to commend you for moving quickly.

### ***NAHB's Position***

- Like all industries, home builders rely on permitting programs that are timely, predictable and consistent.
- Builders and developers take steps to avoid impacts to wetlands and streams, but when we don't know what's regulated and what's not, how do we know what to avoid?
- We are ready to work with EPA and the Corps to craft a clear, defensible rule that is fair and balanced and that meets the needs of our members.
- Ultimately, we are in complete agreement with Administrator Pruitt that any future rule must limit federal jurisdiction based on Congressional intent and Supreme Court rulings.

### ***NAHB Requests***

- With respect to wetland permitting, we encourage EPA to explore opportunities for states to administer the dredge and fill "wetland" permitting program within their borders as envisioned by Congress in Section 404(g) of the Clean Water Act.
- While 46 states have assumed their 402 stormwater programs, only 2 – New Jersey and Michigan – have assumed their 404 wetland programs.
- NAHB believes that regulation is best handled at the state and local level and encourages EPA to continue to support the ongoing "Assumable Waters Subcommittee" in which we participate. We encourage EPA to explore ways to remove hurdles that have kept so many states from running their wetland permitting programs.

## **Talking Points on EPA's Renovation, Repair, and Painting (RRP) Lead Rule**

### ***Background***

- EPA's Lead Renovation, Repair, and Painting (RRP) Rule addresses lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint in target housing and child-occupied facilities built before 1978.
- RRP regulation requires that individual and company renovators be certified under the rule.
- Certified renovators are required to register with EPA, complete approved training courses and use lead-safe work practices during renovation, repair and painting activities that disturb lead-based paint in buildings subject to the rule unless a determination can be made that no lead-based paint would be disturbed during the renovation or repair.
- When the rule was first published in 2008, it included provisions to minimize burdensome aspects of the program that have since been eliminated or failed to achieve their promised goal in implementation.
  - The opt-out provision, which allowed homeowners to affirmatively opt-out of the requirements of the RRP program when no children under six or pregnant women were present in the target housing under renovation was subsequently eliminated by later amendment.
  - The provision calling for an EPA recognized lead test kit, which was to be used by a certified renovator to determine whether there are hazardous levels of lead-based paint, has not brought an affordable, qualified, recognized test kit to market.
- Furthermore, despite certain misconceptions, the RRP Rule by statute is not intended to require abatement level activities.

### ***NAHB's Position***

- NAHB believes the Lead Renovation, Repair, and Painting (RRP) program is a prime example of a program where changes can be made that align with the Administration's efforts to significantly improve the landscape for small businesses without undermining environmental protections.
- EPA's current retrospective review of the program through Section 610 of the Regulatory Flexibility Act is a timely opportunity to bring meaningful change to this program.

### ***NAHB Requests***

- We urge EPA to take the following steps to reform the RRP Lead rule:
  - Conduct a revised cost-benefit regulatory analysis that acknowledges that a lead testing kit has not come to market.
  - Respond to the congressional call for EPA to address the lack of a qualifying lead-based paint test kit, including an explanation of how the Agency will resolve the issue.
  - Limit the scope of RRP coverage by reducing the housing stock covered by the regulation to homes built before 1960, which have the greatest likelihood of containing lead-based paint.
  - Revise EPA's regulation amending the renovator refresher training requirements under the RRP program, which created a bifurcated training structure that penalizes those seeking to utilize new opportunities for online training and has created confusion within the industry.
- NAHB feels it is important for the above actions to be included in the final Section 610 report due out shortly.

## Talking Points on Federal Overreach in the NPDES Stormwater Program

### **Background**

- NAHB agrees with Administrator Pruitt's position on the need to return control of key environmental programs to the States. Reversing federal overreach in the National Pollutant Discharge Elimination System (NPDES) stormwater program is a crucial priority for the U.S. housing industry.
- Builders are directly regulated through both individual stormwater permits for **active construction**, and indirectly, through **post-construction requirements** in the municipal stormwater program.

### **NAHB's Position**

- We are seeing federal overreach in the stormwater program in both of these areas:
  - **Active Construction:** While we worked hard with EPA staff to simplify many provisions in the 2017 Construction General Permit (CGP) released last January, NAHB recently filed a Petition for Review of this permit because it holds small builders liable for fines of up to \$50,000 per day for off-site violations they have no control over.
  - **Post-construction:** Although EPA dropped efforts to adopt a national post-construction standard in 2014, the Agency continues to pressure states to adopt numeric limits. EPA guidance released in November 2016 cited a list of almost entirely numeric limits as the only "acceptable" provisions for state programs. We are gravely concerned with this type of federal intrusion into municipal and state affairs.

### **NAHB's Requests**

- NAHB has a long history and good working relationship with EPA's stormwater program. With respect to stormwater regulations, we have two specific asks:
  - **NAHB ASK FOR ACTIVE STORMWATER:** NAHB previously worked with EPA to develop a streamlined compliance template for single family homes on large subdivisions. We'd like to request that EPA turn this template into a streamlined small lot permit, which would further simplify the program and dramatically reduce compliance costs for these low-risk sites.
  - **NAHB ASK FOR POST-CONSTRUCTION:** To clarify some long-held confusion in the post-construction program, we ask that EPA clearly state that the Permit Quality Review (PQR) "report cards" that states receive from EPA offices are not legally binding. These reviews are suggestions, not requirements, and should not be seen as federal mandates to adopt stricter stormwater limits.

### **Concluding Remarks**

- We hope to continue this dialogue as there will be many other issues to address as EPA moves forward to implement the Administration's directives for regulatory reforms.
- NAHB stands ready to work with EPA to restore balance and make regulations more cost-effective without undermining their intent.
- We are pleased that the Administration recognizes that a balanced regulatory approach is imperative to putting economic growth back on track.