



NAHB
NATIONAL ASSOCIATION
OF HOME BUILDERS



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Executive Vice President and
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July 9, 2004

Information Quality Guidelines Staff
Mail Code 28221T
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Sir or Madam:

On behalf of the National Association of Home Builders (NAHB), I respectfully request that the U.S. Environmental Protection Agency (EPA) correct information in its fact sheet, "U.S. v. Wal-Mart Stores, Inc., Fact Sheet, May 12, 2004," (The Fact Sheet) which was disseminated to the public on the EPA website at <http://www.epa.gov/compliance/resources/cases/civil/cwa/walmart2-fs.pdf>. This request is being made because the Fact Sheet contains false information and fails to comply with the Information Quality Act and its implementing guidelines.

The National Association of Home Builders is a Washington-based trade association representing more than 215,000 members involved in home building, remodeling, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing and other aspects of residential and light commercial construction. Known as "the voice of the housing industry," NAHB is affiliated with more than 800 state and local home builders associations around the country. NAHB's builder members will construct about 80 percent of the more than 1.77 million new housing units projected for 2004, making housing one of the largest engines of economic growth in the country. NAHB asks for this data correction in order to address the misleading and erroneous statements in the Fact Sheet that storm water runoff from construction sites is a primary cause of water quality impairment. What follows is a detailed description of the information within the Fact Sheet that does not comply with the applicable guidelines, along with an explanation of NAHB's rationale for requesting the information correction.

This Data Correction Request Is Authorized by the Guidelines

The Fact Sheet was disseminated within the meaning of the Office of Management and Budget's (OMB) Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (OMB Guidelines), Section V.8; 67 Fed Reg. 8542, 8460; February 22, 2002, the information was disseminated with the approval of EPA, and it is used to support an EPA position. Furthermore, it is used to support on-going EPA policy. Since the information has been disseminated within the meaning of the OMB Guidelines,

it must comply with EPA's own *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency*, October, 2002 (EPA Guidelines). Section 5.3 of the EPA Guidelines details when the guidelines apply, and generally states that the guidelines apply to "information" EPA disseminates to the public.

The first bullet in Section 5.3 specifies that "EPA initiates a distribution of information if EPA prepares the information and distributes it to support or represent EPA's viewpoint, or to formulate or support a regulation, guidance, or other Agency decision or position."¹ EPA prepared the Fact Sheet, as far as anyone can tell. It also distributed and continues to distribute the Fact Sheet by posting it on the EPA website. The distribution is obviously done to support the agency's decision or position on storm water runoff, especially from construction sites. Approximately one third of the Fact Sheet's four pages is devoted to lamentation of the Clean Water Act compliance record of the construction industry, and it concludes with a paragraph announcing a new policy to pursue enforcement for "big-box" retailers and "large national and residential (sic) builders."² This clearly falls within the realm of the Guidelines' purview. EPA also states in the Fact Sheet that this is the first of many enforcement actions against construction companies and their contractors, thus making it very likely that versions of the Fact Sheet, including the erroneous and misleading information will continue to be promulgated and publicized by the agency.

The second bullet in Section 5.3 specifies that the Guidelines also apply to information that is distributed by EPA but prepared by third parties if the manner of distribution reasonably suggests that EPA agrees with the information, if EPA indicates that the information represents EPA's viewpoint, or if EPA uses the information to formulate or support an Agency policy, decision or position. In the Fact Sheet, EPA relies upon a 1999 Natural Resources Defense Council (NRDC) Report when it states that storm water runoff was responsible for approximately 1500 beach closings in 1998. Because EPA is distributing this information as an assertion of fact that is EPA's own position, EPA is disseminating the information within the meaning of both OMB and EPA Guidelines and thus, the rigors of the Guidelines apply.

While the EPA Guidelines claim an exemption from data quality requirements for "Information of an ephemeral nature,"³ the information in the Fact Sheet is not ephemeral in the sense of EPA Guidelines section 5.4. The information consists of statements of purported fact that do not disappear, become moot, or lose their significance when the Wal-Mart consent decree is finalized. The Fact Sheet was disseminated contemporaneously with the Wal-Mart decree, and those proceedings are discussed in the first part of the Fact Sheet; NAHB lodges no objection to the discussion that is specific to the Wal-Mart case. However, the subsequent discussion of water quality impairment is general and forward-looking. It does not pertain

¹ *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency*, October, 2002 (EPA Guidelines), Section 5.3.

² "U.S. v. Wal-Mart Stores, Inc., Fact Sheet, May 12, 2004," (The Fact Sheet), at page 4.

³ EPA Guidelines, Section 5.4, fourth bulleted point.

specifically to the Wal-Mart case, but it does pertain to the continuing future policy of the EPA and the claims of fact that purport to justify it.

Even if EPA were to believe the information to be ephemeral, EPA lacks the authority to exempt such information from the data quality controls as outlined in the OMB Guidelines, EPA has initiated the dissemination of its own information and sponsored the dissemination of third party data.⁴ The OMB Guidelines contain an exemption for press releases, but the Fact Sheet is not a press release. There is a press release announcing the consent decree, but it is a separate document. The Fact Sheet might carry information about the consent decree, but it is perfectly capable of standing on its own as a statement of EPA policy and its factual rationale. The Fact Sheet contains documentation of EPA viewpoint and justification for a new policy that has clearly been disseminated to the public. As such, NAHB's request for correction is germane and timely.

The Information in the Fact Sheet is False and Misleading

As discussed more fully below, the information presented in the Fact Sheet is inaccurate. First, the Fact Sheet incorrectly attributes a host of environmental and human health injuries to construction site storm water runoff. Second, the information in the Fact Sheet contradicts EPA's own data on the environmental risks posed by uncontrolled storm water runoff from construction sites.

The Fact Sheet Attributes Construction Site Storm Water Runoff to the Wrong Category

The Fact Sheet contains a section titled "Environmental Harm and Public Health Impacts Associated with Storm Water Runoff." The first bullet under this section states:

Uncontrolled storm water runoff from industrial facilities and construction sites harms the environment and public health. According to a 1998 Report to Congress, storm water runoff is a primary cause of impaired water quality in the United States. It contributes to 13 percent of impaired rivers and streams, 21 percent of impaired lakes, 55 percent of impaired ocean shorelines, and 46 percent of impaired estuaries.⁵

In this description, EPA confuses the categories of sources contributing to storm water runoff. The category of sources causing the impairment EPA mentions is "urban runoff and storm sewers," which is entirely different than "storm water runoff from industrial and construction sites," the category of storm water runoff that is relevant to the enforcement action and policy. Urban runoff and storm sewers contain very different pollutants from storm water runoff from construction sites. For example, pathogens, oil and grease, and metals are seldom

⁴Office of Management and Budget (OMB) Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (OMB Guidelines), Section V.8; 67 Fed Reg. @8454 (February 22, 2002).

⁵"U.S. v. Wal-Mart Stores, Inc., Fact Sheet, May 12, 2004," (The Fact Sheet), at page 2.

found in storm water runoff from construction sites—the appropriate category—according to EPA’s own data, which is discussed more fully below. However, these pollutants are found in varying levels in urban runoff and storm sewers—the inappropriate category— as reported to EPA by the states in their Water Quality Inventory reports.

The second bullet under “Environmental Harm and Public Health Impacts Associated with Storm Water Runoff” states that:

It carries high levels of pollutants like mud and sediment, oil and grease, suspended solids, algae-producing nutrients, heavy metals, toxins and trash into our storm sewers and ultimately into our rivers, lakes, estuaries, wetlands and oceans. A 2000 National Water Quality Assessment reported that pathogens, which contribute to 35% of the reported water quality problems in impaired rivers and streams, are commonly found in storm water runoff from urban areas. All of these pollutants can have significant impact on the environment and on public health. For example, in 1998 more than 1,500 beach closings and advisories were associated with storm water runoff.⁶

By starting this bullet with the word “It,” the reader is led to believe that the Fact Sheet is referring to “Uncontrolled storm water runoff from industrial facilities and construction sites,” the subject of the previous paragraph. The text contains no other candidates for the antecedent of this pronoun. Thus the Fact Sheet claims that uncontrolled runoff from construction sites carries “high levels of pollutants like mud and sediment, oil and grease, suspended solids, algae-producing nutrients, heavy metals, toxins and trash.” However, an examination of EPA’s Environmental Assessment of Construction and Development, paints a much different picture. This assessment was developed along with the proposal to promulgate Effluent Limitation Guidelines, and it contains the agency’s scientific conclusions. The Environmental Assessment contains data in direct conflict with the propositions contained in the Fact Sheet. For example, on the levels of oil and grease in runoff from construction sites, EPA’s Environmental Assessment states:

Construction activities during site development are not believed to be major contributors of these contaminants [oil and grease] to storm water runoff. Improper operation and maintenance of construction equipment at construction sites, as well as poor housekeeping practices (e.g., improper storage of oil and gasoline products), could lead to leakage or spillage of products that contain hydrocarbons, but these incidents would likely be small in magnitude and managed before offsite contamination could occur.⁷

On the topic of heavy metals, the Environmental Assessment states “construction sites are not thought to be important sources of metal contamination. Runoff from such sites could have high

⁶ “U.S. v. Wal-Mart Stores, Inc., Fact Sheet, May 12, 2004,” (The Fact Sheet), at page 2.

⁷ EPA’s Environmental Assessment of Construction and Development Proposed Effluent Guidelines June 2002, Section 2.2.3.1.

metals contents if the soil is already contaminated. Construction activities alone do not result in metal contamination.”⁸

Turning to the Fact Sheet’s assertion that pathogens are commonly found in storm water runoff from construction sites, the Environmental Assessment states:

Construction site activities are not believed to be major contributors to pathogen contamination of surface waters. The only potential known source of pathogens from construction sites are portable septic tanks used by construction workers. These systems, however, are typically self-contained and are not connected to the land surface. Any leaks from them would likely be identified and addressed quickly.⁹

The Fact Sheet discusses “urban areas” and not construction sites, even though EPA concedes the distinction to be important. In the 2000 Report to Congress, immediately following a discussion of pathogens, EPA discusses siltation. In that section, the Report distinguishes between urban runoff and runoff from construction.¹⁰ Therefore, EPA does not treat these two categories as interchangeable, and when EPA refers to “urban areas,” this category does not include runoff from construction sites. Thus, the statement in the Fact Sheet does not reflect EPA’s characterization of its own data and incorrectly implies that pathogens are commonly found in storm water runoff from construction sites.

Even the Fact Sheet’s claim that pathogens are “commonly” found in storm water runoff from urban areas is misleading. The 2000 National Water Quality Assessment, Report to Congress states “Bacteria [pathogens] commonly (emphasis supplied) enter surface waters in inadequately treated sewage, fecal material from wildlife, and in runoff from pastures, feedlots and urban areas.”¹¹ The Fact Sheet neglects to mention the many other sources of pathogens that contribute to 35% of the reported water quality problems, or to indicate that runoff from urban areas is last on this list in terms of level of contribution.

The Fact Sheet Contradicts EPA’s Own Data about Construction Site Storm Water Runoff

The next section after “Environmental Harm and Public Health Impacts Associated with Storm Water Runoff” is titled “Environmental Harm Associated with Storm Water Runoff from Construction Sites.” This section provides a somewhat more accurate description of the environmental risks posed by uncontrolled storm water runoff from construction sites. As EPA’s own data show, however, the Fact Sheet exaggerates the water quality impacts from storm water

⁸ EPA’s Environmental Assessment of Construction and Development Proposed Effluent Guidelines June 2002, Section 2.2.2.1.

⁹ EPA’s Environmental Assessment of Construction and Development Proposed Effluent Guidelines June 2002, Section 2.2.4.1.

¹⁰ *National Water Quality Inventory, 2000 Report*, US Environmental Protection Agency, Office of Water, October 2002, at page 13.

¹¹ *National Water Quality Inventory, 2000 Report*, US Environmental Protection Agency, Office of Water, October 2002, at page 12.

runoff from construction sites by calling them “serious.” EPA’s own data show the actual risks posed by that runoff are in fact very minor. Every two years each state and tribe is required under the Clean Water Act to provide detailed information to EPA regarding the “leading pollutants and stressors impairing rivers and streams, and lakes” and the “leading sources impairing the water quality of rivers and streams, and lakes” within its boundaries. EPA is required under the Clean Water Act to use that information to prepare a report to Congress detailing the water quality status of the nation’s water bodies. In the most recent of these reports, the *National Water Quality Inventory–2000 Report*, which was released on October 3, 2002, the leading pollutants and stressors identified by the states and tribes include 20 pollutants¹² as follows (in descending order):

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|------------------------------|-----------------------------|
| 1) pathogens | 11) turbidity |
| 2) sediment/siltation | 12) salinity/tds/chlorides |
| 3) other habitat alterations | 13) suspended solids |
| 4) organic enrichment/low DO | 14) mercury |
| 5) nutrients | 15) phosphorus |
| 6) thermal modifications | 16) unknown |
| 7) metals | 17) toxicity |
| 8) flow alteration | 18) debris/foam-scums-flocs |
| 9) pesticides | 19) cause unknown |
| 10) pH | 20) copper |

Of these 20 pollutants, the one considered most relevant to construction site storm water runoff is “suspended solids.”¹³ But according to the *2000 Report*, this is the pollutant causing impairment in just 2.0% of the assessed rivers and streams.¹⁴ Another pollutant on the list that is relevant to construction site storm water runoff is “sediment/siltation.” The *2000 Report* cites siltation as the pollutant causing water quality impairment in just 12% of the assessed rivers and streams.¹⁵ Since only 19 percent of the nation’s rivers and 43 percent of the lakes have been assessed, the true water quality of most lakes, rivers, and streams is unknown.

In further examining the data from the 2000 Report, it is obvious that the states and tribes do not believe construction sites are a primary source of impairment. Below is the list of the 19 leading impairment sources¹⁶ for rivers and streams, according to state and tribal Clean Water Act compilations (in descending order); “construction sites” is not included.

¹² From Table A-4, Appendices, *National Water Quality Inventory, 2000 Report*, US Environmental Protection Agency, Office of Water, October 2002.

¹³ See, e.g., EPA’s Environmental Assessment of Construction and Development Proposed Effluent Guidelines June 2002, Section 2.2.1.1: “Erosion from construction sites can be a significant source of sediment pollution to nearby streams.”

¹⁴ From Table A-4, Appendices, *National Water Quality Inventory, 2000 Report*, US Environmental Protection Agency, Office of Water, October 2002.

¹⁵ From Table A-4, Appendices, *National Water Quality Inventory, 2000 Report*, US Environmental Protection Agency, Office of Water, October 2002.

¹⁶ From Table A-5, Appendices, *National Water Quality Inventory, 2000 Report*, US Environmental Protection Agency, Office of Water, October 2002.

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|------------------------------|---|
| 1) agriculture | 11) resource extraction |
| 2) hydromodification | 12) nonirrigated crop production |
| 3) crop-related sources | 13) intensive animal feeding operations |
| 4) grazing related sources | 14) channelization bank or shoreline modification/destabilization |
| 5) source unknown | 15) removal of riparian vegetation |
| 6) habitat modification | 16) land disposal |
| 7) urban runoff/storm sewers | 17) irrigated crop production |
| 8) natural sources | 18) erosion and sedimentation |
| 9) silviculture | 19) unspecified nonpoint source |
| 10) municipal point sources | |

For argument's sake, if it were assumed that the states and tribes considered "erosion and sedimentation" to be a surrogate source for or to include "construction sites," how significant would "construction sites" be as a source of impairment? The answer is "not very," as "erosion and sedimentation" ranks next to last as a cause of impairment, above only "unspecified nonpoint source."

Similarly, for assessed lakes, the states and tribes list "suspended solids" as a primary pollutant¹⁷ causing impairment and do not list "construction sites" as a source of pollutants causing impairment¹⁸. Only 2.3% of the assessed lakes are impaired by "suspended solids" and 9.1% by "sediment/siltation,"¹⁹ the pollutants most relevant to storm water runoff from construction sites.

It is important to note that in demonstrating the insignificant contribution of active construction sites to water quality impairment, NAHB's analysis is completely in line with EPA's own assessment. That assessment was done when EPA analyzed the cost of the proposed revisions to the Total Maximum Daily Load rule in July 1999. In the final report where EPA estimated the cost of the proposed off-set provision on the construction industry, EPA stated "To estimate the amount of new construction that might be subject to the offset requirement, it is necessary to estimate the amount of construction activity that contributes to impairment of the

¹⁷ See Table B-4, Appendices, *National Water Quality Inventory, 2000 Report*, US Environmental Protection Agency, Office of Water, October 2002.

¹⁸ See Table B-5, Appendices, *National Water Quality Inventory, 2000 Report*, US Environmental Protection Agency, Office of Water, October 2002.

¹⁹ See Table B-4, Appendices, *National Water Quality Inventory, 2000 Report*, US Environmental Protection Agency, Office of Water, October 2002.

nation's waters."²⁰ It was concluded: "...it seems reasonable to assume that 2-3% of construction activity might be contributing to impairments."²¹

Given that the apparent purpose of this Fact Sheet is to communicate to the public the nature of EPA's storm water permitting requirements and its justification for establishing storm water controls on runoff from construction sites, it would seem that the section describing the environmental harms that can result from uncontrolled storm water runoff from construction sites would be sufficient and relevant. It is not. The inclusion of a discussion of the environmental harm and human health impacts resulting from urban runoff and storm sewers, a completely different source than construction sites, is inappropriate and misleading. That environmental harm is attributed to construction both implicitly and explicitly is unacceptable. The Fact Sheet leads the public to believe—erroneously—that storm water discharges from construction sites have been shown to be a primary contributor to the impairment of water quality and to be responsible for beach closings and pathogen-borne illnesses. Those assertions and aspersions are not only unsupported by data, they are contradicted by EPA's own data and thus deemed arbitrary.

Confusing the sources of pollutants and using false statements, as EPA has done in the Fact Sheet, clearly violate OMB Guidelines concerning "objectivity." OMB Guidelines Section V.3 states: "'Objectivity' includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner," (Section V.3.a). The next section (V.3.b) begins "In addition, 'objectivity' involves a focus on ensuring accurate, reliable, and unbiased information." (67 Fed. Reg. @8459) Part (a) of the Section V.3 requires presentations to be accurate, complete, and not misleading; part (b) requires the information itself to be accurate, reliable, and unbiased, i.e., true. Objectivity is a matter of substance and presentation; the presentation must not be misleading, and the facts must be true.

The Fact Sheet is not Transparent or Reproducible

The Fact Sheet fails to identify properly the source of all the data relied on during its preparation, thus it is neither transparent nor reproducible. The OMB Guidelines require data to be sufficiently transparent that an independent analysis could be made by a qualified member of the public. The Fact Sheet does not aid in locating the data used to support its assertions, since it cites inaccurately the "1998 Report to Congress" as the source of many of the facts. However, the source is actually the 1996 Report to Congress, which was released in April 1998. This citation is misleading because the "1998 Report to Congress" is an entirely different document that was released in 2000.

²⁰ *Final Draft, Analysis of the Incremental Cost of Proposed Revisions to the NPDES Permit and Water Quality Standards Rules*, prepared for the US Environmental Protection Agency, Office of Wastewater Management by Environomics, Inc., July 30, 1999, at page 13.

²¹ *Final Draft, Analysis of the Incremental Cost of Proposed Revisions to the NPDES Permit and Water Quality Standards Rules*, prepared for the US Environmental Protection Agency, Office of Wastewater Management by Environomics, Inc., July 30, 1999, at page 14.

This discussion is not just a cavil over a title. EPA is directing the public to look in the wrong place for the data justifying an agency policy. NAHB was able to find the actual source because it has a trained professional staff to do the research; most citizens would be unable to go further than the blind lead provided in the Fact Sheet. It is EPA's responsibility to disseminate data in a way that would allow the public to investigate and evaluate the quality of the EPA's data and its decisions; even the EPA Guidelines recognize that information "enhances citizen understanding and provides people with tools to protect their families and their communities."²² Inaccurate or omitted documentation enhances no understanding, and it actually *deprives* the people of tools to protect their families and communities.

Similarly, while EPA does not offer a citation in the Fact Sheet to the statement of how many beach closing occurred in 1998, this sentence is taken directly from EPA's Region 6 enforcement website, which provides a citation (albeit incorrectly) to a Natural Resources Defense Council (NRDC) report titled "Testing the Waters 1999: A Guide to Water Quality at Vacation Beaches." Nowhere in the Fact Sheet does EPA state that it has relied upon a third party resource for its data. NRDC issues this report every year, and while the 2003 Report can be located through some research online, the 1999 Report could not be located. EPA emphasizes the importance of thorough documentation early in its own information quality guidelines, specifically calling for it in Section 2.2. Inaccurate or omitted documentation erodes the reproducibility of the information substantially. The information becomes both less transparent and less reliable. Reproducibility is a key element of OMB's meaning of "objectivity," (OMB Guidelines Section V.3). Section V.3.a specifically states, "...the agency needs to identify the sources of the disseminated information..."²³ The failure to do so, as in the Fact Sheet, is clearly in violation of the intent of the Information Quality Act.

The Low Quality of the Information Requires Correction

If an agency disseminates information that does not comply with the applicable guidelines, affected persons may seek and obtain timely correction of the information. (OMB Guidelines Section III.3, EPA Guidelines ch. 8). The members of NAHB are affected by the misinformation in the Fact Sheet, because it reports to the public that construction causes harm that in fact arises elsewhere, if it exists. This causes the public to misapprehend the issues in construction, and skews the climate of opinion. Where land development decisions are made by referendum, voters who accept EPA's exaggerated description of construction impact will be more likely to reject attempts to build the housing their communities need greatly. Where the decisions are made by local governments, officials will be subject to pressure from the voters and from their own impressions that have been misshapen by EPA's faulty dissemination of information. Builders will be harmed because they will be less able to build in high demand

²² *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency*, October, 2002 (EPA Guidelines), Section 2.1.

²³ Office of Management and Budget (OMB) *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies* (OMB Guidelines), Section V.8; 67 Fed Reg. @8459.

markets, where the housing is needed the most. To find work, they may have to move to other localities or exit the business altogether.

EPA has disseminated information that falsely blames construction for various environmental injuries, and places the construction industry in a false light as a primary contributor to other damage. These statements are injuries to the reputation of builders, and they could be actionable in many states, if uttered by a private party. The injury to reputation alone is sufficient to justify correction of the record, but it is not the only reason NAHB offers.

EPA announces in its Fact Sheet that it intends to pursue vigorous or enhanced enforcement against residential builders, most of whom are NAHB members. Therefore, EPA has announced an intention to increase the regulatory burden and increase the costs to builders. Even innocent builders bear increased costs from increased inspections; more scrutiny means that processes will take longer and consume more of a builder's time to assure EPA they are in compliance. The Fact Sheet is issued as justification for the increased costs. Because the Fact Sheet is false, inaccurate, and misleading, neither it nor its contents can justify placing a special burden on builders. The public cannot evaluate the wisdom of the EPA policy because it has been shrouded in misinformation.

Similarly, this dissemination could become the basis for rules that require builders to eliminate pollutants that they do not discharge. Construction site operators must not be required to remedy environmental harms that do not arise on their sites and over which they have no control. The public, too, is injured by this dissemination of false data when it attempts to ameliorate the source of environmental harms listed in the Fact Sheet through actions against construction sites, instead of pursuing the actual sources of these pollutants. The continued mismatch of sources and pollutants continues the misdirection of agency resources and efforts, hampering the abilities of environmental agencies to remedy environmental harms, and removing the ability of the public to assist in resolving the environmental problems, like beach closings, that plague their communities.

The Fact Sheet disseminates false and misleading information to the public in many places about an issue of substantial importance. NAHB has shown which statements are false or misleading, and has demonstrated clearly the factual basis of the claims of error. NAHB respectfully requests that EPA correct the record by removing any references to storm water runoff from construction sites as sources of pathogens, oil, grease, or heavy metals in storm water runoff, and to remove any implication that construction site storm water runoff is a significant source of any of the those pollutants. Furthermore, NAHB requests that EPA correct the record by removing any and all statements that assert or imply that storm water runoff is a primary source of water quality impairment. NAHB also requests that the citations to the 1998 report be corrected to reflect that the report title carries a year of 1996. Finally, because the statements about construction are false as matters of fact and misleading—at best—as matters of presentation, NAHB requests EPA to remove the section, "Environmental Harm and Public Health Impacts Associated with Storm Water Runoff" in its entirety from this and all future Fact Sheets connected to enforcement actions for violations of storm water permitting requirements

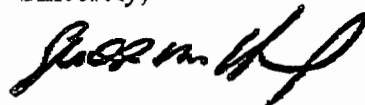
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for runoff from construction sites. NAHB also urges EPA to refrain from making any similar dissemination in the future, and to take steps to ensure that all future publications are free from bias, factually accurate, and not misleading in presentation.

NAHB believes that as suggested these corrections will stop this ongoing distortion of the role of active construction sites in water quality impairment, as far as storm water runoff is concerned. If EPA intends to continue to single out residential builders for enforcement attention, EPA will need to provide a different justification. Correction will assure the public and the builders that increased enforcement --and its attendant compliance costs--are not being thrust upon them frivolously or capriciously. If builders are to be a special target, then builders must be shown to be a special problem. The Fact Sheet does not constitute and cannot support such a showing. A proper investigation will better inform the public, better support sound decisions, and reduce the costs for builders who are obeying the law.

If you have any questions or would like to discuss this request for correction, please contact our Regulatory Counsel, AJ Holliday, at 202-266-8305 or aholliday@nahb.com.

Sincerely,



Gerald M. Howard
Executive Vice President and
Chief Executive Officer

GMH/ah/ae

cc: The Honorable Michael O. Leavitt, Administrator
Mr. Thomas V. Skinner, Acting Assistant Administrator, ECA
Mr. Benjamin Grumbles, Acting Assistant Administrator, Office of Water