

**Associated Builders and Contractors, Inc.  
Associated General Contractors of America  
American Road and Transportation Builders Association  
Building Owners and Managers Association (BOMA) International  
International Council of Shopping Centers  
Leading Builders of America  
NAIOP, commercial real estate development association  
National Association of Home Builders  
National Association of Real Estate Investment Trusts  
National Multi Housing Council  
National Apartment Association  
The Real Estate Roundtable**

July 29, 2010

The Honorable John Boehner  
Speaker  
United States House of Representatives  
Washington, DC 20515

**Re: Opposition to Amendment to Strike “Stormwater Discharge” Provision  
of H.R. 2584, EPA Appropriations Bill**

Dear Speaker Boehner:

Our organizations represent stakeholders in the residential, retail, commercial, industrial, contracting, public works, lending and other aspects of the real estate sector. We strenuously object to any amendment to strike Section 439 of H.R. 2584, the bill that makes FY’2012 appropriations for Environmental Protection Agency (EPA) programs.

Section 439 provides that EPA may not expend appropriated funds for development, adoption, or enforcement of Federal regulations that would expand the current permit program for stormwater discharges – until 90 days after EPA provides a statutorily required report to Congress. Section 402(p)(5) of the Clean Water Act (CWA) sets forth a clear process that EPA must follow before it increases its regulatory scope in the stormwater arena. The agency must first conduct a study on the need for new permit regulations, report to Congress, and then Congress must have a fair and adequate opportunity to consider EPA’s recommendation before new regulations are proposed. Yet, EPA is moving hastily with the intent to expand its stormwater regulatory program, effectively circumventing the “study and report” mandate in the CWA.

The EPA’s website reports that the agency intends to propose a new rule in September 2011. See <http://cfpub.epa.gov/npdes/stormwater/rulemaking.cfm>. Yet, no study has been delivered to Congress. And, no congressional committee with substantive oversight of EPA’s water agenda has had a chance to consider what the agency intends to propose. Moreover, EPA has yet to release an analysis of the impacts its rule would have on small businesses, despite the fact that such a report was due months ago after the agency convened an impact review panel last year as required by the Small Business Regulatory Enforcement and Fairness Act (SBREFA).

Section 439 of the EPA appropriations bill simply requires the agency to pause before it proposes new regulations, until 90 days after it meets the CWA’s “report and study” mandate. This pause will give Congress the chance to analyze any EPA proposed rule and weigh-in on the need for new stormwater permit mandates on the real estate sector. Any amendment to strike Section 439 of H.R. 2584 would deprive Congress of the chance to give meaningful input to

EPA, before it embarks on a regulatory course that imposes a new, onerous and expensive suite of regulations on the real estate sector of our economy.

Furthermore, our organizations have significant concerns that EPA lacks the authority to adopt the new regulations it plans to propose in September. EPA's current stormwater program establishes permit requirements on *active* construction sites, during the phase where projects are being built. New regulations, however, are intended to address already-developed properties and impose *post-construction* requirements on landowners and municipalities to address rainfall runoff that happens *after* construction processes come to an end. Our organizations are extremely concerned that EPA's expanded program to address runoff from "already developed properties" could impose permit requirements on landowners of all sorts – homeowners, homeowner associations, and owners of stores, restaurants, and office buildings, to name just a few. Or, EPA could pursue a "back-door" approach and compel municipalities to enact more stringent regulations on property owners to control post-construction storm runoff. What is more, such new federal requirements will certainly increase the cost of construction and will likely open up liability issues concerning the contractor's legal/contractual obligations with regard to the site and the owner after he leaves the site. Either avenue raises serious questions regarding EPA's statutory authority to enact permit regulations for stormwater discharges from already developed properties.

To conclude, this is not the time to impose new federal regulatory requirements on the hard-hit real estate sector, which is still struggling to emerge from the Great Recession. Our organizations urge the House to reject any amendment to strike Section 439 from H.R. 2584. As the CWA requires, Congress must be afforded the necessary time to study and assess the need for new EPA stormwater regulations.

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