

## Advocacy Recommends that EPA Comply with the RFA and Perform a Review of Chemical Monitoring Requirements in Industrial Stormwater Permits

On March 14, 2006, the Office of Advocacy (Advocacy) sent a comment letter to the U.S. Environmental Protection Agency (EPA) on the proposed Multi-Sector General Permit (MSGP), which covers more than 3,656 facilities and may serve as a model for state programs that issue their own permits. The MSGP requires that facilities develop best management plans through stormwater pollution prevention plans that will limit the pollution entering U.S. waters. In addition, the MSGP requires monitoring of the chemical constituents of stormwater on a periodic basis.

- Advocacy advised EPA that this permit should be subject to the Regulatory Flexibility Act (RFA). Instead, EPA stated that this proposal is not a rule. Advocacy pointed out that the recent case of *National Association of Home Builders v. Army Corps of Engineers*, 417 F. 3d 1272 (D.C. Cir. 2005) found that a general permit that affects a large number of entities would constitute a “rule” under the Administrative Procedure Act, and that therefore the agency needs to comply with the requirements of the RFA.
- In its proposal, EPA committed to a study that will address problems associated with analytical monitoring, the adequacy of stormwater pollution prevention plans, and how MSGP requirements impact water quality. The Office of Advocacy is supportive of EPA studying these issues prior to the issuance of the next MSGP in 2010. To assist EPA’s study, the Office of Advocacy supplemented its comment letter to EPA with a technical memorandum, prepared by E.H. Pechan & Associates, that details concerns about the utility, cost, and burden of the chemical analytical requirements on small businesses.

A complete copy of Advocacy’s letter to EPA, together with the Pechan Technical Memorandum comments may be accessed at <http://www.sba.gov/advo/laws/comments>.

For more information, visit Advocacy’s Webpage at <http://www.sba.gov/advo>, or contact Assistant Chief Counsel Kevin Bromberg by email at [kevin.bromberg@sba.gov](mailto:kevin.bromberg@sba.gov) or by phone at (202) 205-6533.