

ARIZONA—CARBON MONOXIDE—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
25. thence, easterly along the southern boundary of the Gila River Indian Reservation which is the southern line of Sections 13, 14, 15, 16, 17, and 18, Township 2 South, Range 1 East, to the boundary between Maricopa and Pinal Counties as described in Arizona Revised Statutes Section 11–109 and 11–113, which is the eastern line of Range 1 East, except that portion in the Gila River Indian Reservation;				
26. thence, northerly along the eastern boundary of Range 1 East, which is the common boundary between Maricopa and Pinal Counties, to a point where the eastern line of Range 1 East intersects the Gila River, except that portion in the Gila River Indian Reservation;				
27. thence, southerly up the Gila River to a point where the Gila River intersects with the southern line of Township 2 South; and				
28. thence, easterly along the southern line of Township 2 South to the point of beginning which is a point where the southern line of Township 2 South intersects with the eastern line Range 7 East, except that portion in the Gila River Indian Reservation.				
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 [FR Doc. 05–4585 Filed 3–8–05; 8:45 am]  
 BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 122**

[OW–2002–0068; FRL–7882–2]

RIN 2040–AE71

**Extension of National Pollutant Discharge Elimination System (NPDES) Permit Deadline for Storm Water Discharges for Oil and Gas Activity That Disturbs One to Five Acres**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Today’s action postpones until June 12, 2006, the requirement to obtain National Pollutant Discharge Elimination System (NPDES) storm water permit coverage for oil and gas construction activity that disturbs one to five acres of land. This is the second postponement promulgated by EPA for these activities. This postponement will allow the Agency additional time to complete its analysis of the issues raised by stakeholders about storm water runoff from construction activities at oil and gas sites and of practices and methods for controlling these storm water discharges to mitigate impacts on

water quality, as appropriate. Within six months of today’s action, EPA intends to publish a notice of proposed rulemaking in the **Federal Register** for addressing these discharges and to invite public comments.

**DATES:** This final rule is effective on March 9, 2005.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. OW–2002–0068. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

**FOR FURTHER INFORMATION CONTACT:** Jeff Smith, Office of Wastewater Management, Office of Water, Environmental Protection Agency

(4203M), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0652; fax number: (202) 564–6431; e-mail address: [smith.jeff@epa.gov](mailto:smith.jeff@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Affected Entities*

Entities potentially affected by this action include operators of construction activities disturbing at least one acre, but less than five acres of land at oil and gas sites, North American Industrial Classification System (NAICS) codes and titles: 211—Oil and Gas Extraction, 213111—Drilling Oil and Gas Wells, and 213112—Support Activities for Oil and Gas Operations.

This description is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This description identifies the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not identified could also be affected. To determine whether your facility or company is affected by this action, you should carefully examine the applicability criteria in 40 CFR 122.26(b)(15) and (e)(8). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### B. When Does This Rule Take Effect?

Because this rule provides temporary relief from permitting requirements for certain dischargers, this rule is not subject to the general requirement for a thirty-day waiting period after publication before a final rule takes effect. By providing such relief, this rule "relieves a restriction" on these dischargers. 5 U.S.C. 553(d)(1). Moreover, pursuant to 5 U.S.C. 553(d)(3), EPA has good cause to make this rule effective immediately upon publication. The March 10, 2005, deadline this action extends is less than thirty days after the publication of this rule. Making this action effective as soon as it is published will help reduce any confusion by those affected by the rule regarding the necessity for obtaining permit coverage. Therefore, a thirty-day waiting period is unnecessary and would be contrary to the public interest.

## II. Background

On January 18, 2005 (70 FR 2832), EPA proposed a fifteen month postponement of the permit requirement for oil and gas construction activity disturbing one to five acres, from March 10, 2005, to June 12, 2006, to allow time for EPA to complete its analysis of the economic impacts and the legal and procedural implications of the options that the Agency is considering regarding the regulation of storm water discharges from oil and gas-related construction sites, and to evaluate the practices and methods operators employ to control storm water discharges from the sites affected by this rule. In that proposal, EPA explained the background of the NPDES construction permit requirements, and why EPA believes it is appropriate to provide an additional fifteen month postponement of permit requirements for construction of oil and gas exploration and production facilities disturbing one to five acres. When describing construction activity that disturbs "one to five acres" or in discussing "small" construction activity in this preamble, EPA is referring to activities covered by 40 CFR 122.26(b)(15).

## III. Response to Comments

EPA received a modest number of comments on its proposal to provide an additional fifteen month postponement of permit requirements for discharges from oil and gas-related construction activity disturbing one to five acres. EPA's responses to all of these comments may be found in the Response to Comment document that is part of the docket for this final rule.

## IV. Today's Action

In today's action, EPA is extending until June 12, 2006, the deadline for obtaining NPDES storm water permits for oil and gas construction activity that disturbs at least one acre, but less than five acres of land and sites disturbing less than one acre that are a part of a larger common plan of development or sale that disturbs between one and five acres. The text finalized at § 122.26(e)(8) does not create any duty to apply for an NPDES permit that did not already exist as a result of EPA's Phase II regulations. Rather, this amendment merely extends the permitting deadline for a certain class of dischargers.

During the next fifteen months, EPA intends to (1) complete the economic impact analysis; (2) complete the evaluation of the legal and procedural implications associated with several options that the Agency is considering with regard to regulation of storm water discharges from oil and gas-related construction sites; and (3) continue to evaluate practices and methods operators may employ to control storm water discharges from the sites affected by this rule. One of the issues EPA will be examining during this period is how best to resolve questions posed by outside parties regarding section 402(l)(2) of the Clean Water Act, which exempts certain storm water discharges from oil and gas exploration, production, processing, or treatment operations or transmission facilities from NPDES permit requirements. EPA intends to convene at least one public meeting with stakeholders for the purpose of exchanging information on current industry practices and the effectiveness of those practices in protecting water quality and obtaining input on the appropriate approach for addressing construction storm water discharges from this industry. EPA will publish a separate notice in the **Federal Register** with information about this public meeting. Finally, EPA expects to propose and take some subsequent final action based on the Agency's conclusions following these activities prior to June 12, 2006.

## V. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant

regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It merely postpones implementation of an existing rule deadline.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative

Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Today's action merely postpones the permit authorization deadline for oil and gas construction activity that disturb one to five acres. Because EPA is postponing a deadline for numerous small entities to comply with NPDES permit requirements, this final action will not impose any burden on any small entity.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may

significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule does not impose any costs. It merely postpones the permit authorization deadline for oil and gas construction activity that disturb one to five acres. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final rule is not subject to the requirements of section 203 of UMRA.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. It merely postpones the permit authorization deadline for oil and gas construction activity that disturb one to five acres. Thus, Executive Order 13132 does not apply to this rule.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. It merely postpones the permit authorization deadline for oil and gas construction activity that disturb one to five acres. Thus, Executive Order 13175 does not apply to this rule.

#### *G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This regulation is not subject to Executive Order 13045 because it is not economically significant as defined under Executive Order 12866.

#### *H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. The only effect of this rule is to (1) delay the permit authorization requirement for affected small oil and gas operations by an additional fifteen months and (2) allow

EPA time necessary to develop a further proposal to address storm water discharges from such activities.

### *I. National Technology Transfer And Advancement Act*

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards. However, EPA is exploring the availability and potential use of voluntary consensus standards developed consistent with the NTTAA and the requirements of the CWA as a means of addressing storm water runoff from oil and gas construction activities as part of a future rulemaking.

### *J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective March 9, 2005.

### *K. Petitions for Judicial Review*

Under section 509(b)(1) of the Clean Water Act, judicial review of this action may only be had by filing a petition for review in the United States Court of Appeals within 120 days after March 9, 2005.

### **List of Subjects in 40 CFR Part 122**

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

Dated: March 3, 2005.

**Stephen L. Johnson,**

*Acting Administrator.*

■ For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

#### **PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

■ 1. The authority citation for part 122 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 *et seq.*

#### **Subpart B—[Amended]**

■ 2. Revise § 122.26(e)(8) to read as follows:

#### **§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).**

\* \* \* \* \*

(e) \* \* \*

(8) For any storm water discharge associated with small construction activity identified in paragraph (b)(15)(i) of this section, see § 122.21(c)(1). Discharges from these sources, other than discharges associated with small construction activity at oil and gas exploration, production, processing, and treatment operations or transmission facilities, require permit authorization by March 10, 2003, unless designated for coverage before then. Discharges associated with small construction activity at such oil and gas sites require permit authorization by June 12, 2006.

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[FR Doc. 05-4467 Filed 3-8-05; 8:45 am]

**BILLING CODE 6560-50-P**

### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 180**

**[OPP-2005-0022; FRL-7699-8]**

#### **Clofentezine; Pesticide Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of clofentezine in

or on grapes and persimmons. Makhteshim-Agan of North America, Inc. and the Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective March 9, 2005. Objections and requests for hearings must be received on or before May 9, 2005.

**ADDRESSES:** To submit a written objection or hearing request, follow the detailed instructions as provided in Unit VI of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP-2005-0022. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1801 S. Bell Street, Arlington, VA 22202-4501. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Carmen Rodia, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001; telephone number: (703) 306-0327; fax number: (703) 305-6596; e-mail address: [rodia.carmen@epa.gov](mailto:rodia.carmen@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

##### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), *e.g.*, agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), *e.g.*, cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), *e.g.*, agricultural workers; farmers;