



# Federal Register

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**Friday,  
December 20, 2002**

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**Part IV**

## **Environmental Protection Agency**

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**Proposed National Pollutant Discharge  
Elimination System (NPDES) General  
Permit for Storm Water Discharges From  
Construction Activities; Notice**

**ENVIRONMENTAL PROTECTION  
AGENCY**

[FRL-7424-9]

**Proposed National Pollutant Discharge  
Elimination System (NPDES) General  
Permit for Storm Water Discharges  
From Construction Activities**

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

**ACTION:** Notice of availability for comment.

**SUMMARY:** EPA Regions 1, 2, 3, 5, 6, 7, 8, 9, and 10 today are proposing EPA's NPDES general permits for discharges from large and small construction activity. Hereinafter, the terms "permit" or "construction general permit" or "CGP" will replace "permits." Today's proposed permit will replace the existing permit covering large construction sites in EPA Regions 1, 2, 3, 7, 8, 9 and 10 that expires on February 17, 2003 and the permit covering large construction sites in EPA Region 6 that expires July 6, 2003. Today's proposed permit would also cover large construction sites in EPA Region 5. In addition, today's proposed permit incorporates coverage of small construction activity in EPA Regions 1, 2, 3, 5, 6, 7, 8, 9 and 10. Today's proposed permit is similar to the 1998 permits and will authorize the discharge of pollutants in storm water runoff associated with construction activities in accordance with the terms and conditions described therein.

**Note:** EPA is also announcing its intention to propose, in a subsequent rulemaking, to delay the permit authorization deadline set forth in the NPDES regulations as it may relate to oil and gas construction activity that disturbs between one and five acres of land. The Agency intends to propose to delay this deadline in order to better evaluate the impact of the permit requirements on the oil and gas industry and the best management practices to prevent contamination of storm water runoff, while analyzing the scope and effect of 33 U.S.C. 1342 (l)(2) and other provisions of the Clean Water Act.

**DATES:** Comments on the proposed general permit must be postmarked by February 3, 2003.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Send written comments to: Follow the detailed instructions as provided in Section I.B.

**FOR FURTHER INFORMATION CONTACT:** For further information on the proposed NPDES general permit, contact the

appropriate EPA Regional Office listed in Section I.F, or contact Jack Faulk, Office of Wastewater Management, Office of Water, EPA Headquarters at tel.: 202-564-0768 or e-mail: [faulk.jack@epa.gov](mailto:faulk.jack@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW-2002-0055. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.A.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether

submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

EPA seeks comment on the proposed permit and on the accompanying fact sheet. EPA is not, at this time, seeking comment on a possible proposed revision of the permit application deadline for storm water discharges associated with small construction activity in 40 CFR 122.26(e)(8) as it may relate to oil and gas construction activity that disturbs between one and five acres of land. When EPA proposes to make such a revision, the Agency will seek comment on such proposal at that time.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD-ROM you submit, and in any cover letter accompanying the disk or

CD-ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OW-2002-0055. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to [ow-docket@epa.gov](mailto:ow-docket@epa.gov), Attention Docket ID No. OW-2002-0055. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD-ROM.* You may submit comments on a disk or CD-ROM that you mail to the mailing address identified in Section I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OW-2002-0055.

3. *By Hand Delivery or Courier.* Deliver your comments to: Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue,

NW., Washington, DC 20004, Attention Docket ID No. OW-2002-0055. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.A.1.

### C. Public Hearings

EPA has not scheduled any public hearings to receive public comment concerning the proposed permits in view of the more informal public meetings that will be held and limited attendance at previous hearings which have been held related to the construction general permit. All persons will continue to have the right to provide written comments at any time during the public comment period. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the proposed permit. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the proposed permit. If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the proposed permit at the public hearing.

### D. Public Meetings

EPA will be holding a series of more informal public meetings which will include a presentation on the draft permits and a question and answer session. Due to an informal public meeting's ability to accommodate group discussion and question and answer sessions, public meetings have been used for many storm water general permits and appear to be more valuable than formalized public hearings in helping the public understand a draft storm water permit and identify the issues of concern. Written, but not oral, comments for the official permit record will be accepted at the public meetings. Comments generated from what was learned at a public meeting (or discussion with someone who did attend) can be submitted any time up to the end of the comment period. More information on these meetings will be available on the Internet at <http://www.epa.gov/npdes/stormwater> and on the various EPA Regional Web sites (e.g. <http://www.epa.gov/region6/sws> for EPA Region 6, <http://www.epa.gov/>

[r10earth/stormwater.htm](http://www.epa.gov/region10) for EPA Region 10) as soon as dates and locations have been finalized.

### E. Finalizing the Permit

After the close of the public comment period, EPA will issue a final permit decision. This decision will not be made until after all public comments have been considered and appropriate changes made to the permit. A Responses to Comments will be included as part of the final permit decision.

### F. Who Are the EPA Regional Contacts for This Proposed Permit?

For EPA Region 1, contact Thelma Murphy at tel.: (617) 918-1615 or e-mail at [murphy.thelma@epa.gov](mailto:murphy.thelma@epa.gov).

For EPA Region 2, contact Karen O'Brien at tel.: (212) 637-3717 or e-mail at [obrien.karen@epa.gov](mailto:obrien.karen@epa.gov) or for Puerto Rico, Sergio Bosques at tel.: (787) 977-5838 or e-mail at [bosques.sergio@epa.gov](mailto:bosques.sergio@epa.gov).

For EPA Region 3, contact William Toffel at tel.: (215) 814-5706 or [toffel.william@epa.gov](mailto:toffel.william@epa.gov).

For EPA Region 5, contact Brian Bell at tel.: (312) 886-0981 or e-mail at [bell.brianc@epa.gov](mailto:bell.brianc@epa.gov).

For EPA Region 6, contact Brent Larsen at tel.: (214) 665-7523 or e-mail at: [larsen.brent@epa.gov](mailto:larsen.brent@epa.gov).

For EPA Region 7, contact Mark Matthews at tel.: (913) 551-7635 or e-mail at: [matthews.mark@epa.gov](mailto:matthews.mark@epa.gov).

For EPA Region 8, contact Vern Berry at tel.: (303) 312-6234 or e-mail at: [berry.vern@epa.gov](mailto:berry.vern@epa.gov).

For EPA Region 9, contact Eugene Bromley at tel.: (415) 972-3510 or e-mail at [bromley.eugene@epa.gov](mailto:bromley.eugene@epa.gov).

For EPA Region 10, contact Misha Vakoc at tel.: (206) 553-6650 or e-mail at [vakoc.misha@epa.gov](mailto:vakoc.misha@epa.gov).

## II. Background

### A. Statutory and Regulatory History

Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA), which directed the Environmental Protection Agency (EPA) to develop a phased approach to regulate storm water discharges under the National Pollutant Discharge Elimination System (NPDES) program. EPA published a final regulation on the first phase on this program on November 16, 1990, establishing permit application requirements for "storm water discharges associated with industrial activity." EPA defined the term "storm water discharge associated with industrial activity" in a comprehensive manner to cover a wide variety of

facilities. Construction activities that disturb at least five acres of land and have point source discharges to waters of the U.S. are defined as an "industrial activity" per 40 CFR 122.26(b)(14)(x).

Phase II of the storm water program was published in the **Federal Register** on December 8, 1999. Phase II includes sites disturbing greater than one acre and less than five acres as well as sites less than one acre of total land area that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity is defined per 40 CFR 122.26(b)(15)(i).

In developing the Phase II storm water regulations, EPA conducted analysis of the potential impacts of the regulation on the National economy and also analyzed impacts on small businesses. These impacts focused on implementation of sediment and erosion control practices or best management practices to reduce pollutants commonly associated with construction storm water discharges. In performing these analyses, EPA considered affected industrial sectors, including the oil and gas industry. EPA determined that few, if any, oil and gas exploration sites would be affected by Phase II and impacts on the accuracy of Phase II rule cost estimates were unlikely to be significant. Therefore, EPA did not include oil and gas exploration sites in the Final Draft of the Economic Analysis of the Phase II Final Rule. Since January 2002, information has become available indicating that close to 30,000 oil and gas sites may be affected by the Phase II storm water regulations. In the spirit of Executive Order 13211, which directs EPA to consider the impact of its actions on energy-related production activities, the Agency believes it is important to review the economic analysis of the Phase II rule to determine the impact on the oil and gas industry. In evaluating the impact, the Agency will work with states, industry, and other entities to gather and evaluate data on the development and use of appropriate best management practices for the oil and gas industry. EPA will also continue to review the scope and effect of 33 U.S.C. 1342(l)(2), relating to oil and gas exploration activities, and other provisions of the Clean Water Act. EPA intends in the very near future to propose to extend the March 10, 2003, permit authorization deadline for Phase II oil and gas facilities to be covered by a storm water permit.

### *B. Summary of Significant Changes From 1998 Construction General Permit*

This permit replaces the previous Construction General Permits which were issued for a five-year term by various EPA Regions in February 1998 (63 FR 7858) and July 1998 (63 FR 36490). The organization and numbering of today's draft CGP has been revised slightly from the 1998 CGP to more clearly present permittee responsibilities. In addition, following is a list of significant changes included in the draft CGP as compared to the February 1998 CGP. These changes are discussed in more detail in the CGP fact sheet.

#### 1. Change in Permit Areas Covered

##### i. Additions

a. Indian Country within the States of Michigan, Wisconsin, Minnesota, Louisiana, Oklahoma, New Mexico, and Texas,

b. State of New Mexico,

c. Discharges in the State of Oklahoma that are not under the authority of the Oklahoma Department of Environmental Quality, including activities associated with oil and gas exploration, drilling, operations, and pipelines (includes SIC codes 1311, 1381, 1382, 1389, and 5171), and point source discharges associated with agricultural production, services, and silviculture, and

d. Discharges in the State of Texas that are not under the authority of the Texas Commission on Environmental Quality (formerly TNRC), including activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline.

##### ii. Deletions

a. State of Maine,

b. Indian Country within the State of Maine.

c. State of Arizona.

2. *Small construction activities (those disturbing one to five acres)* added to eligibility provisions.

3. *Uncontaminated excavation dewatering* added as an allowable non-storm water discharge.

4. *Eligibility provisions for discharges threatening water quality* clarified.

5. *Restrictions on and documentation of discharges to waters with Total Maximum Daily Loads (TMDLs)* added.

6. *Eligibility requirements specific to the National Historic Preservation Act* added.

7. *Small construction waiver availability* added.

8. *Discharge authorization timeframe* changed from 48 hours after NOI

submission to immediately upon submission of a complete and accurate NOI.

9. *NOI content requirements (and draft revised NOI Form)* modified to include:

- i. Nature of construction project,
- ii. Name of Indian reservation or affiliated Tribe,
- iii. Address of SWPPP location changed from optional to required,
- iv. Receiving water name clarified to indicate MS4 name may be appropriate response,
- v. Identification of whether site is part of larger common plan and if site is large or small, and
- vi. National Historic Preservation Act eligibility certification.

10. *Notification of potential waiting periods for permit authorization* in certain areas as necessitated for the protection of endangered or threatened species added.

11. *Clarification that partial final stabilization is acceptable* in certain instances.

12. *Elimination of the need to estimate runoff coefficient* of the site for pre- and post-construction.

13. *Option for weekly site inspections* rather than biweekly inspections with followup inspections after each rain event added.

14. *Inspection requirements for linear construction projects* clarified.

15. *Procedures for addressing non-attainment of water quality standards* added.

16. *Standard conditions revised* consistent with 40 CFR 122.41.

17. *Delegation of signatory authorities* for all reports other than NOIs, can be retained on-site in the SWPPP rather than submitted to EPA.

### *C. Summary of Terms and Conditions of Proposed General Permit*

#### 1. Discharges Covered

Operators of large and small construction activities within the areas listed below may be eligible to obtain coverage under this permit for allowable storm water and non-storm water discharges:

*Region 1:* The Commonwealth of Massachusetts and the State of New Hampshire; Indian Country in the Commonwealth of Massachusetts and the States of Rhode Island and Connecticut; and Federal facilities in Vermont.

*Region 2:* The Commonwealth of Puerto Rico and Indian Country in the State of New York.

*Region 3:* District of Columbia; and Federal facilities in the State of Delaware.

*Region 5:* Indian Country in the States of Michigan, Minnesota, and Wisconsin.

*Region 6:* The State of New Mexico; Indian Country in the States of Louisiana, Oklahoma, Texas, and New Mexico (except Navajo Reservation Lands [see Region 9] and Ute Mountain Reservation Lands (see Region 8)); discharges in the State of Oklahoma that are not under the authority of the Oklahoma Department of Environmental Quality, including activities associated with oil and gas exploration, drilling, operations, and pipelines (includes SIC codes 1311, 1381, 1382, 1389, and 5171), and point source discharges associated with agricultural production, services, and silviculture; and discharges in the State of Texas that are not under the authority of the Texas Commission on Environmental Quality (formerly the Texas Natural Resource Conservation Commission), including activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline.

*Region 7:* Indian Country in the States of Iowa, Kansas, and Nebraska (except Pine Ridge Reservation Lands (see Region 8)).

*Region 8:* Federal facilities in Colorado; Indian Country in Colorado (as well as the portion of the Ute Mountain Reservation located in New Mexico), Montana, North Dakota (as well as that portion of the Standing Rock Reservation located in South Dakota and excluding the portion of the lands within the former boundaries of the Lake Traverse Reservation, which is covered under the permit for areas of South Dakota), South Dakota (as well as the portion of the Pine Ridge Reservation located in Nebraska and the portion of the lands within the former boundaries of the Lake Traverse Reservation located in North Dakota and excluding the Standing Rock Reservation which is covered under the permit for areas of North Dakota), Utah (except Goshute and Navajo Reservation lands (see Region 9)), and Wyoming.

*Region 9:* The Islands of American Samoa and Guam, Johnston Atoll, Midway/Wake Islands and Commonwealth of the Northern Mariana Islands; Indian Country in Arizona (as well as Navajo Reservation lands in New Mexico and Utah), California, and Nevada (as well as the Duck Valley Reservation in Idaho, the Fort McDermitt Reservation in Oregon, and the Goshute Reservation in Utah).

*Region 10:* The States of Alaska and Idaho; Indian Country in Alaska, Idaho (except Duck Valley Reservation (see Region 9)), Washington, and Oregon

(except for Fort McDermitt Reservation (see Region 9)); and Federal facilities in Washington.

## 2. Limitations on Coverage

The proposed general permit includes a number of eligibility restrictions including: post-construction discharges; discharges which may adversely affect endangered or threatened species and critical habitat, or historic properties; discharges which may cause or contribute to exceedances of water quality standards; and discharges that are inconsistent with any applicable approved total maximum daily loads (TMDLs). Construction operators that do not meet the eligibility requirements of the proposed general permit would be required to submit an individual permit application or seek coverage under any alternate general permit, if available.

## 3. Deadlines and Permit Application Process

To obtain discharge authorization under the proposed general permit, dischargers would be required to submit a notice of intent (NOI) requesting discharge authorization. The NOI would be required to include basic information about the construction project (e.g., operator name, site name, and site address) and certification that a storm water pollution prevention plan (SWPPP) has been prepared for the site describing the best management practices that the discharger will implement to control pollutants in the discharges in accordance with the requirements of the CWA. NOI due dates are as follows:

### i. Large Construction (> 5 acres)

a. *Ongoing projects as of the effective date of the permit:* Within 90 days of the effective date of this permit (or by July 7, 2003 for facilities electing to remain covered by the 1998 Region 6 permit until it expires), unless permittee is eligible to submit a Notice of Termination (NOT) from coverage under a previous NPDES permit before the 90th day (or by July 7, 2003 for facilities electing to remain covered by the 1998 Region 6 permit until it expires), provided that the NOT is submitted in compliance with the permit requirements.

b. *New projects after the effective date of the permit:* Prior to commencement of construction activities.

### ii. Small Construction (1–5 acres)

a. *Ongoing projects as of March 10, 2003:* By March 10, 2003.

b. *New projects after the effective date of the permit:* Prior to commencement of construction activities.

## 4. Storm Water Pollution Prevention Plans

The proposed general permit would require that all operators covered by the permit develop and implement a SWPPP. The SWPPP would be the principal means through which dischargers comply with the CWA's requirement to control pollutants in their discharges. All SWPPPs would be required to be developed in accordance with sound engineering practices and developed specific to the site. These SWPPPs would be required to be prepared prior to commencement of construction activities and then updated as appropriate. Specific elements to be addressed in the SWPPP include:

- i. *Pollution Prevention Plan Contents: Site and Activity Description,*
- ii. *Pollution Prevention Plan Contents: Controls to Reduce Pollutants,*
- iii. *Non Storm Water Discharge Management,*
- iv. *Maintenance of Controls,*
- v. *Documentation of Permit Eligibility Related to Endangered Species,*
- vi. *Documentation of Permit Eligibility Related to Historic Places,*
- vii. *Copy of Permit Requirements,*
- viii. *Applicable State, Tribal, or Local Programs,*
- ix. *Inspections,*
- x. *Maintaining an Updated SWPPP,*
- xi. *Signature, Plan Review and Making Plans Available,*
- xii. *Management Practices,*
- xiii. *Documentation of Permit Eligibility Related to Impaired Waters,*

## 5. Permit Appeal Procedures

Within 120 days following notice of EPA's final decision for the general permit under 40 CFR 124.15, any interested person may appeal the permit in the Federal Court of Appeals in accordance with Section 509(b)(1) of the CWA. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or apply for an individual permit as specified at 40 CFR 122.21 (and authorized at 40 CFR 122.28), and then petition the Environmental Appeals Board to review any conditions of the individual permit (40 CFR 124.19 as modified on May 15, 2000, 65 FR 30886).

## III. Executive Order 12866

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. OMB has exempted review of NPDES general permits under the terms of Executive Order 12866.

#### IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rule-making requirements under the Administrative Procedures 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.

Issuance of an NPDES general permit is not subject to rulemaking requirements, including the requirement for a general notice of proposed rulemaking, under APA section 553 or any other law, and is thus not subject to the RFA requirements.

The APA defines two broad, mutually exclusive categories of agency action—"rules" and "orders." Its definition of "rule" encompasses "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency \* \* \*" APA section 551(4). Its definition of "order" is residual: "a final disposition \* \* \* of an agency in a matter other than rule making but including licensing." APA section 551(6) (emphasis added). The APA defines "license" to "include \* \* \* an agency permit \* \* \*" APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes "rule making"

requirements. The APA defines "rule making" as "the agency process for formulating, amending, or repealing a rule." APA section 551(5). By its terms, then, section 553 applies only to "rules" and not also to "orders," which include permits.

#### V. 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. UMRA uses the term "regulatory actions" to refer to regulations. (See, e.g., UMRA section 201, "Each agency shall \* \* \* assess the effects of Federal regulatory actions \* \* \* (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to 2 U.S.C. 658 which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law. \* \* \*"

As discussed in the RFA section of this notice, NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

#### VI. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities resulting from the proposed construction general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of the construction general permit for large construction activities have already been approved by the Office of Management and Budget (OMB) (OMB Control No. 2040-0188) in previous submissions made for the NPDES permit program under the provisions of the Clean Water Act. Information collection requirements of the construction general

permit for small construction activities were submitted to OMB (OMB Control No. 2040-0211) for review and approval and will be published in a separate **Federal Register** Notice.

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

Dated: December 9, 2002.

**Linda M. Murphy,**

*Director, Office of Ecosystem Protection, EPA Region 1.*

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

Dated: December 6, 2002.

**Walter E. Mugdan,**

*Director, Division of Environmental Planning and Protection, EPA Region 2.*

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

Dated: December 10, 2002.

**Victoria Binetti,**

*Acting Director, Water Protection Division, EPA Region 3.*

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

Dated: December 5, 2002.

**Mary P. Tyson,**

*Acting Director, Water Division, EPA Region 5.*

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

Dated: December 11, 2002.

**Miguel I. Flores,**

*Director, Water Quality Protection Division, EPA Region 6.*

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

Dated: December 9, 2002.

**Leo Alderman,**

*Director, Water, Wetlands & Pesticides Division, EPA Region 7.*

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

Dated: December 11, 2002.

**Kerrigan G. Clough,**

*Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance, EPA Region 8.*

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

Dated: December 5, 2002.

**John Kemmerer,**

*Acting Director, Water Division, EPA Region 9.*

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

Dated: December 11, 2002.

**Randall F. Smith,**

*Director, Office of Water, EPA Region 10.*

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