



December 15, 1997

OFFICE OF WATER
(MC-4201)

PROPOSED NPDES STORM WATER REGULATIONS FOR PHASE II AND “NO EXPOSURE” INCENTIVE FOR PHASE I

Today’s proposal would provide a targeted expansion of the existing National Pollutant Discharge Elimination System (NPDES) Storm water program by designating additional sources of storm water that need to be regulated to protect water quality and to finalize the comprehensive storm water program to regulate those sources (This proposal, when finalized, will supersede a regulation issued in August 1995.) The NPDES Phase I storm water program is resulting in significant improvement of surface water quality in the United States by reducing polluted runoff from a large number of priority sources, including major industrial facilities, large and medium city storm sewers (“municipal separate storm sewer systems” or “MS4s”), as well as construction sites that disturb 5 or more acres. The “National Water Quality Inventory, 1994 Report to Congress” provides a general assessment of water quality based on biennial reports submitted by the States under Section 305(b) of the Clean Water Act. The report indicates that storm water discharges from a variety of sources including separate storm sewers, construction, waste disposal, and resource extraction activities are major causes of water quality impairment. Roughly 46 percent of the identified cases of water quality impairment of estuarine square miles surveyed, for example, are attributable to storm sewer runoff.

EPA developed the proposal with extensive outreach and stakeholder involvement. Valuable input was received from representatives from a cross section of interested stakeholders including members of a subcommittee under the Urban Wet Weather Federal Advisory Committee, including State, Tribal, municipal, industrial, environmental representatives, and small entities under the Small Business Regulatory Enforcement Fairness Act (SBREFA). EPA also convened a Small Business Advocacy Review Panel to evaluate and minimize the potential impact of the proposed rule on small entities.

This rule also fulfills a major part of the commitment made by the Vice President when announcing the Clean Water Action Plan in October. To meet the commitment to issue a final regulation by March 1, 1999, we are issuing this proposal now.

PHASE II

- ◆ The proposal designates two classes of facilities for automatic coverage on a nationwide basis under the NPDES program. There are two classes that have been included due to existing information available that discharges of storm water from these types of facilities still contribute significant amounts of pollutants that continue to cause water quality impairments.
 - ▶ small municipal separate storm sewer systems (pollutants include sediment, floatables, oil and grease, as well as other pollutants from illicit discharges) located in urbanized areas (about 3,500 municipalities will be included in the program); and

- ▶ construction activities (pollutants include sediments and erosion from these sites) that disturb equal to or greater than one and less than five acres of land (about 110,000 sites a year will be included in the program).
- ◆ Other facilities and industrial and construction activities, as well as small municipal separate storm sewer systems outside urbanized areas, could be designated on a case-by-case basis.

“NO EXPOSURE” INCENTIVE FOR PHASE I

- ◆ EPA is proposing to conditionally exclude from the NPDES storm water program, Phase I facilities that have “no exposure” of industrial activities, such as industrial products, processes, or raw materials, to storm water, thereby reducing application of the program to many industrial activities currently covered by the program that have no industrial storm water discharges. EPA estimates that at least 70,000 facilities will be able to take advantage of this provision by removing these various activities from the potential to be exposed to storm water.

August 7, 1995 Rule

- ◆ EPA issued its initial storm water phase II rule in August, 1995. The rule allows the NPDES permitting authority to require permits for discharges contributing to water quality impairment on a case-by-case basis and requires all other unregulated storm water dischargers to apply for NPDES permits by August 7, 2001. If this rule is not superseded, millions of industrial and commercial facilities and storm water discharges from all construction activities, no matter what size, as well as over 19,000 municipalities will have to submit permit applications in August 2001.

December 15, 1997 Proposed Rule

COVERAGE - PHASE II

- ◆ The NPDES permitting authority would need to issue permits, most likely general permits, covering the facilities designated (small municipalities and small construction sites) by May 31, 2002. Implementation of the six minimum measures, which focus on a “best management practices” (BMP) approach, identified for the small municipalities in this proposal should significantly reduce pollutants in urban storm water compared to existing levels in a cost effective manner. An example of BMPs could include a public education program on limiting use and runoff of garden chemicals, a soil and erosion control ordinance, as well as good housekeeping for municipal operations. If after implementing the six minimum measures there is still a water quality problem, the municipality would expand or use better tailored BMPs in their minimum measures to result in water quality improvement. Similarly, EPA believes that implementation of BMP controls at small construction sites will also result in a significant reduction in pollutant discharges and an improvement in surface water quality.

- ◆ Municipally-owned industrial facilities which have been excluded from phase I, must apply for permit coverage by August 7, 2001.

NO EXPOSURE INCENTIVE

- ◆ The proposal addresses the “no exposure” exemption. Under the proposal, a conditional exemption would be available to owners or operators of all categories of regulated industrial activity (except construction activity and those entities individually designated by the permitting authority) who could certify that industrial materials, material handling operations and industrial processes are not exposed to storm water.

RESULTS

- ◆ EPA believes that the proposed rule would reduce adverse impacts to water quality and aquatic habitat by further lowering pollutant loads in storm water discharges while regulating only those classes of discharges of storm water which pose the greatest potential for environmental harm. For small municipalities, the reduction and elimination of illicit discharges to the municipalities’ systems, as well as reductions in sediments, floatables, and oil and grease, will be obtained. For small construction sites, erosion and discharges of sediments will be reduced.
- ◆ EPA believes this rule will cost significantly less than the existing 1995 rule that is currently in place; EPA has reduced the annual costs from billions of dollars to a mean annual cost of \$511 million, with expected mean annual monetized benefits from implementation of the requirements of \$310 million. EPA has not factored in the “no exposure” streamlining into these costs; however, the expected minimum annual cost savings for this provision is \$88 million.
- ◆ In addition, EPA has been unable to monetarily quantify numerous ecological benefits that will result from implementation of the regulation, when it is promulgated in 1999, including: reduced scouring and erosion of stream beds, improved aesthetic quality of waters, reduced eutrophication of aquatic systems, benefit to wildlife and endangered and threatened species, biodiversity benefits, and reduced siting costs for reservoirs.

FLEXIBILITY

- ◆ The rule avoids duplication by allowing NPDES permits to be written so that compliance with a qualifying State, Tribal, or local program would constitute compliance with NPDES requirements.
- ◆ The rule would provide for a NPDES program approach that 1) encourages the use of general permits which will significantly reduce permit application costs, 2) provides flexibility for municipalities to determine the nature of storm water controls, 3) does not require extensive monitoring by the permittees, 4) provides flexibility in use of watershed approaches, 5) is

consistent with the existing storm water phase I program, 6) recognizes and includes existing programs, 7) utilizes the existing NPDES program which is Federally enforceable and 8) takes advantage of existing structures and mechanisms for public participation.

SUPPORTING EFFORTS

- ◆ EPA is committed to provide the following assistance to support implementation of the Phase II program: (1) assistance to local governments including support for pilot projects; (2) developing tool box of implementation strategies; (3) providing written technical assistance, including guidance on developing BMPs and measurable goals; (4) developing requirements to control runoff from Federal lands and facilities; and (5) assistance on numerous issues to States/Tribes. Finally, EPA is also committed to conducting an enhanced research effort and compiling a comprehensive evaluation of the NPDES municipal storm water Phase II program over the next 13 years.

SCHEDULE AND MORE INFORMATION

- ◆ The proposed regulation will be published in the **Federal Register** for comment shortly after it is signed by the Administrator. There will be a 90 day public comment period. EPA is going to distribute the proposal widely and will continue to hold briefings for numerous stakeholders, including the Phase II Subcommittee of the Urban Wet Weather Federal Advisory committee on February 5-6, 1998. EPA is holding public meetings to explain its phase II proposal, as well as public hearings to obtain public comment, in six locations as indicated below.

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| Washington, D.C. - February 23, 1998 | Boston, MA - February 25, 1998 |
| Atlanta, GA - February 27, 1998 | Chicago, IL - March 2, 1998 |
| Dallas, TX - March 4, 1998 | San Francisco, CA - March 6, 1998 |

- ◆ Information on the proposed storm water phase II will be located on the World Wide Web at http://www.access.gpo.gov/su_docs/aces/aces140.html.
- ◆ If you have questions, please e-mail them to SW2@epamail.epa.gov or call (202) 260-5816.
- ◆ The final regulation is scheduled to be issued by March 1, 1999.
- ◆ The American Public Works Association (APWA) will be providing 10 workshops on the final rule. The workshops are designed to educate local governments on the implementation of the Phase II rule. The workshop curriculum will include information on a variety of key issues such as anticipated regulatory requirements, agency reporting, best management practices, construction site controls, post construction management for new and redeveloped sites, public education and public involvement strategies, detection and control of illicit discharges, and good housekeeping practices.