only briefly repeats the background necessary to explain the need for today's final rule.

As explained in CWA section 101, Congress enacted the CWA "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" through reduction and eventual elimination of the discharge of pollutants into those waters. CWA section 301 prohibits the discharge of pollutants from a point source except in compliance with certain other sections of the Act. One of those sections, section 402, established the National Pollutant Discharge Elimination System (NPDES), the permitting program for control of point source discharges including storm water.

In the 1987 amendments to the CWA, Congress enacted section 402(p). Section 402(p)(1) relieved certain storm water dischargers (commonly referred to as phase II dischargers) from the requirement to obtain a permit until October 1, 1992. Section 402(p)(6) provided that EPA was to publish regulations by October 1, 1992. Congress later extended the date for the permitting moratorium until October 1, 1994, and the date for publication of phase II regulations until October 1, 1993. See Water Resources Development Act of 1992, Public Law No. 102-580, section 364, 106 Stat. 4797, 4862 (1992).

Though the relief from the permit requirement lapsed on October 1, 1994, EPA had not published phase II storm water regulations. On October 18, 1994, EPA issued guidance explaining that regulations had not yet been promulgated for the phase II storm water program, and that the Agency was unable to waive the statutory prohibition against unpermitted discharges of pollutants to waters of the United States in the absence of such regulations. EPA is not attempting to extend the CWA deadlines in today's rule, but rather is establishing the phase II storm water program under section 402(p)(6). (See Response to Comment section below for further discussion of this issue.)

III. Regulation Changes

In today's rule, EPA is designating under section 402(p)(6) all phase II sources as being part of the phase II program. EPA is establishing permit application deadlines for these dischargers in two tiers in today's rule. To obtain real environmental results early, the first tier applies to those phase II dischargers that the NPDES permitting authority determines are contributing to a water quality impairment or are a significant contributor of pollutants. Those dischargers that have been so designated by the permitting authority are required to obtain a permit and must submit a permit application within 180 days of being notified that such an application is required. The permitting authority has the flexibility to extend this deadline. Under the second tier, all other phase II facilities must apply for permits by August 7, 2001, but only if the phase II regulatory program in place at that time requires permits.

EPA also is establishing application requirements for phase II dischargers, as well as making other conforming changes to other portions of its NPDES regulations in today's rule. For example, EPA is providing flexibility to the permitting authority to modify the specific application requirements for phase II dischargers. Again EPA believes this is a common sense approach to alleviate unnecessary burden on phase II dischargers. The specifics of the application requirements and other conforming changes are explained in the April 7, 1995, notice published at 60 FR 17950. EPA has not changed the regulatory text in today's final rule from that notice.

IV. Responses to Public Comment

A comprehensive "response to comment" document is available in the administrative record for this rulemaking. Many significant comments, and EPA's responses, are summarized below.

Many commenters disagreed with EPA's interpretation of section 402(p) of the CWA in which EPA determined that section 402(p) sets a statutory deadline for the issuance of permits to phase II storm water dischargers. The commenters argued that 402(p) does not require permits for all discharges of storm water after October 1, 1994, rather it prohibits the need for such permits before this date.

EPA disagrees. CWA section 301(a) states that it is illegal to discharge pollutants to waters of the U.S. except in compliance with Section 402. The current regulations under section 402 establish a permit program for point source discharges. In the 1987 amendments to the CWA, Congress added Section 402(p) to ensure the orderly evolution of the NPDES storm water program. Section 402(p)(1) did not alter the basic underlying prohibition in Section 301(a) as it applied to storm water discharges. Section 402(p)(1) did, however, establish temporary relief from permitting requirements for certain storm water discharges for a specified period of time. Section 402(p)(6)provided EPA with the authority to consider alternative control strategies

for the phase II program. Because EPA had not established alternatives under section 402(p)(6), the existing permitting requirements under section 402 applied to phase II dischargers after October 1, 1994.

The legislative history behind 402(p) supports EPA's position that when the date lapsed, phase II sources became subject to the pre-existing statutory requirement to obtain a NPDES permit. The Congressional Record from October 15, 1986 includes the following statements from the House of Representatives:

The relief afforded by this provision extends only to October 1, 1992. After that date, all municipal separate storm sewers are subject to the requirements of 301 and 402.

After October 1, 1992, the permit requirements of the Clean Water Act are restored for municipal separate storm sewer systems serving a population of fewer than 100,000.

132 Cong. Rec. H10532 (Oct. 15, 1986)

More recent Congressional actions provide even clearer support for EPA's interpretation of Section 402(p). The original deadline for permits for phase II storm water discharges was October 1, 1992. At the time of this original deadline, the Agency was not ready to issue regulations for implementation of the phase II program. When Congress recognized the severe liability problem this would create for phase II discharges, Congress decided to extend the relief deadline in section 402(p)(1)to October 1, 1994. At the same time, Congress extended the deadline for phase II regulations in section 402(p)(6)to October 1, 1993, to allow EPA more time to develop phase II regulations. If phase II dischargers were not subject to enforcement for violations of section 301(a) until EPA promulgated the phase II regulations, Congress would not have extended sections 402(p)(1) and 402(p)(6) with differing deadlines. If Congress had not intended unregulated phase II sources to be liable for violations of section 301(a) on October 1, 1992, there would have been no need to amend section 402(p)(1) at all.

In related comments, concern was expressed that if such statutory deadlines are valid, EPA does not have the authority to extend statutory permit deadlines. In response, EPA disagrees that this regulation extends statutory deadlines. The statutory deadline lapsed on October 1, 1994. EPA recognized that fact, as well as the consequences thereof, when it issued the October 18, 1994, guidance. The Agency's authority to act under these circumstances arises from the clear text of section 402(p)(6). That section directs EPA to issue regulations which (1) designate storm