Region I Region II Region III Region IV Region VI Region IX Region X XI. Regulatory Flexibility Act XII. Unfunded Mandates Reform Act

I. Background

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act (CWA)) was amended to provide that the discharge of any pollutant to waters of the United States from any point source is unlawful, except if the discharge is in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.

For a number of reasons, EPA and authorized NPDES States have failed to issue NPDES permits for the majority of point source discharges of storm water. Recognizing this, Congress added section 402(p) to the CWA in 1987 to establish a comprehensive framework for addressing storm water discharges under the NPDES program. Section 402(p)(4) of the CWA clarifies the requirements for EPA to issue NPDES permits for storm water discharges associated with industrial activity. On November 16, 1990 (55 FR 47990 as amended at 56 FR 12100, Mar. 21, 1991; 56 FR 56554, Nov. 5, 1991; 57 FR 11412, Apr. 2, 1992; 57 FR 60447, Dec. 18, 1992), EPA published final regulations which defined the term "storm water discharge associated with industrial activity." These regulations also set forth NPDES permit application requirements for storm water discharges associated with industrial activity and storm water discharges from certain municipal separate storm sewer systems. The regulations presented three permit application options for storm water discharges associated with industrial activity. The first option was to submit an individual application consisting of Forms 1 and 2F. The second option was to become a participant in a group application. The third option was coverage under a general permit in accordance with the requirements of an issued general

The promulgation of today's general permit is in response to the second of these three options. Group applications were submitted in two parts. Part 1 of the application was due by September 30, 1991, and part 2 of the application was due by October 1, 1992. In part 1 of the application, all participants were identified and information on each facility was included, such as industrial activities, significant materials exposed to storm water, and material

management activities. For part 1 of the application, groups also identified sampling subgroups to submit sampling data for part 2. Over 1,200 groups with over 60,000 member facilities submitted part 1 applications. Upon review of the part 1 application, if the EPA determined that the application was an appropriate grouping of facilities with complete information provided on each participant, and a suitable sampling subgroup was proposed, the application was approved.

Part 2 of the application consisted of sampling data from each member of the sampling subgroup identified in part 1 of the application. In drafting today's general permit, EPA reviewed both parts of the applications and formulated the permit language noticed today. NPDES authorized States were provided the data from the group applications. Authorized NPDES States may propose and finalize either individual permits for each facility included in the application located in the State, or general permits, if the State has general permit authority.1 If the State feels additional information is needed from the applicants, the State may ask each or any of the applicants for more information on their facility and/or discharge.

EPA estimates that about 100,000 facilities nationwide discharge storm water associated with industrial activity (not including oil and gas exploration and production operations) as described under phase I of the storm water program. The large number of facilities addressed by the regulatory definition of "storm water discharge associated with industrial activity" has placed a tremendous administrative burden on EPA and States with authorized NPDES programs to issue and administer permits for these discharges.

To provide a reasonable and rational approach to addressing this permitting task, the Agency has developed a strategy for issuing permits for storm water discharges associated with industrial activity. In developing this strategy, the Agency recognized that the CWA provides flexibility in the manner in which NPDES permits are issued,²

and has used this flexibility to design a workable permitting system. In accordance with these considerations, the permitting strategy (described in more detail in 57 FR 11394) describes a four-tier set of priorities for issuing permits for these discharges:

Tier I—Baseline Permitting—One or more general permits will be developed to initially cover the majority of storm water discharges associated with

industrial activity.

Tier II—Watershed Permitting— Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for individual or watershed-specific general permits.

Tier III—Industry-Specific Permitting—Specific industry categories will be targeted for individual or

industry-specific general permits. Tier IV—Facility-Specific Permitting—A variety of factors will be used to target specific facilities for

individual permits.

The general permit accompanying this fact sheet will continue Phase 1 permitting activities for storm water discharges associated with industrial activity by providing industry-specific coverage to group applicants in the following areas: the States of Arizona, Florida, Idaho, Louisiana, Maine, Massachusetts, New Hampshire, New Mexico, Oklahoma, and Texas; the District of Columbia; Johnston Atoll, and Midway and Wake Islands; the Commonwealth of Puerto Rico; Federal Indian Reservations in Alaska, Arizona, California, Connecticut, Idaho, Louisiana, Maine, Massachusetts, Nevada, New Hampshire, New Mexico, Oklahoma, Oregon, Rhode Island, Texas, Utah (only the Navajo and Goshute Reservations), Vermont, and Washington; and Federal facilities located in Arizona, the Commonwealth of Puerto Rico, the District of Columbia, Delaware, Idaho, Johnston Atoll. Midway and Wake Islands, Vermont, and Washington.³ EPA will provide today's permit to the NPDES authorized States and encourages such States to consider this permit for their permitting

II. Types of Discharges Covered

On November 16, 1990 (55 FR 47990), EPA promulgated the regulatory

¹ As of December 1993, 39 of the 40 NPDES authorized State permitting programs had the authority to issue general permits.

²The court in *NRDC* v. *Train*, 396 F.Supp. 1393 (D.D.C. 1975) *aff'd*, *NRDC* v. *Costle*, 568 F.2d 1369 (D.C.Cir. 1977), has acknowledged the administrative burden placed on the Agency by requiring permits for a large number of storm water discharges. The courts have recognized EPA's discretion to use certain administrative devices, such as area permits or general permits, to help manage its workload. In addition, the courts have recognized flexibility in the type of permit conditions that can be established, including the use of requirements for best management practices.

³ In 5 of the 40 States that are authorized to issue NPDES permits for municipal and industrial sources, EPA issues permits for discharges from Federal facilities. EPA also retains authority to issue permits on Federal Indian Reservations. However, this fact sheet only addresses general permits as indicated above. Where EPA is the permit issuing authority for other storm water discharges, either individual permits or a different general permit will be issued.