October 1, 1983 at the rates indicated in the table below.

List of Subjects in 39 CFR Part 10

Foreign relations.

Luxembourg International Express Mail

Custom designed service [1] [2], up to and including—		On demand service [2], up to and including—	
Pounds	Rate	Pounds	Rate
1	$27.00	1	$19.00
2	29.90	2	21.90
3	32.80	3	24.80
4	35.70	4	27.70
5	38.60	5	30.60
6	41.50	6	33.50
7	44.40	7	36.40
8	47.30	8	39.30
9	50.20	9	42.20
10	53.10	10	45.10
11	56.00	11	48.00
12	58.90	12	50.90
13	61.80	13	53.80
14	64.70	14	56.70
15	67.60	15	59.60
16	70.50	16	62.50
17	73.40	17	65.40
18	76.30	18	68.30
19	79.20	19	71.20
20	82.10	20	74.10
21	85.00	21	77.00
22	87.90	22	79.90
23	90.80	23	82.80
24	93.70	24	85.70
25	96.60	25	88.60
26	99.50	26	91.50
27	102.40	27	94.40
28	105.30	28	97.30
29	108.20	29	100.20
30	111.10	30	103.10
31	114.00	31	106.00
32	116.90	32	108.90
33	119.80	33	111.80
34	122.70	34	114.70
35	125.60	35	117.60
36	128.50	36	120.50
37	131.40	37	123.40
38	134.30	38	126.30
39	137.20	39	129.20
40	140.10	40	132.10
41	143.00	41	135.00
42	145.90	42	137.90
43	148.80	43	140.80
44	151.70	44	143.70

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

MACAO INTERNATIONAL EXPRESS MAIL

Custom designed service [1] [2], up to and including—		On demand service [2], up to and including—	
Pounds	Rate	Pounds	Rate
1	$28.00	1	$20.00
2	31.70	2	23.70
3	35.40	3	27.40
4	39.10	4	31.10
5	42.80	5	34.80
6	46.50	6	38.50
7	50.20	7	42.20
8	53.90	8	45.90
9	57.60	9	49.60
10	61.30	10	53.30
11	65.00	11	57.00
12	68.70	12	60.70
13	72.40	13	64.40
14	76.10	14	68.10
15	79.80	15	71.80
16	83.50	16	75.50
17	87.20	17	79.20
18	90.90	18	82.90
19	94.60	19	86.60
20	98.30	20	90.30

MACAO INTERNATIONAL EXPRESS MAIL—Continued

Custom designed service [1] [2], up to and including—		On demand service [2], up to and including—	
Pounds	Rate	Pounds	Rate
21	102.00	21	94.00
22	105.70	22	97.70
23	109.40	23	101.40
24	113.10	24	105.10
25	116.80	25	108.80
26	120.50	26	112.50
27	124.20	27	116.20
28	127.90	28	119.90
29	131.60	29	123.60
30	135.30	30	127.30
31	139.00	31	131.00
32	142.70	32	134.70
33	146.40	33	138.40
34	150.10	34	142.10
35	153.80	35	145.80
36	157.50	36	149.50
37	161.20	37	153.20
38	164.90	38	156.90
39	168.60	39	160.60
40	172.30	40	164.30
41	176.00	41	168.00
42	179.70	42	171.70
43	183.40	43	175.40
44	187.10	44	179.10

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

SWEDEN INTERNATIONAL EXPRESS MAIL

Custom designed service [1] [2], up to and including—		On demand service [2], up to and including—	
Pounds	Rate	Pounds	Rate
1	$28.00	1	$20.00
2	31.70	2	23.70
3	35.40	3	27.40
4	39.10	4	31.10
5	42.80	5	34.80
6	46.50	6	38.50
7	50.20	7	42.20
8	53.90	8	45.90
9	57.60	9	49.60
10	61.30	10	53.30
11	65.00	11	57.00
12	68.70	12	60.70
13	72.40	13	64.40
14	76.10	14	68.10
15	79.80	15	71.80
16	83.50	16	75.50
17	87.20	17	79.20
18	90.90	18	82.90
19	94.60	19	86.60
20	98.30	20	90.30
21	102.00	21	94.00
22	105.70	22	97.70
23	109.40	23	101.40
24	113.10	24	105.10
25	116.80	25	108.80
26	120.50	26	112.50
27	124.20	27	116.20
28	127.90	28	119.90
29	131.60	29	123.60
30	135.30	30	127.30
31	139.00	31	131.00
32	142.70	32	134.70
33	146.40	33	138.40
34	150.10	34	142.10
35	153.80	35	145.80
36	157.50	36	149.50
37	161.20	37	153.20
38	164.90	38	156.90
39	168.60	39	160.60
40	172.30	40	164.30
41	176.00	41	168.00
42	179.70	42	171.70
43	183.40	43	175.40
44	187.10	44	179.10

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

A transmittal letter making these changes in the pages of the International Mail Manual will be published in the **Federal Register** as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

(39 U.S.C. 401, 404, 407)

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 83-24018 Filed 8-31-83; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124, 144, 145, 233, 270, and 271

[OW-FRL-2372-8]

Permit Regulations; Revision in Accordance with Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is today promulgating revisions to regulations governing the following EPA permit programs: the National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act (CWA), Underground Injection Control (UIC) under the Safe Drinking Water Act (SDWA), the State "dredge or fill" (404) program under Section 404 of the CWA, and the Hazardous Waste Management (HWM) permit program under the Resource Conservation and Recovery Act (RCRA). The rules promulgated today cover a number of issues affecting these permit programs and are the result of a settlement agreement between EPA and industry petitioners.

On November 16, 1981, EPA entered into a settlement agreement with numerous industry petitioners in the consolidated pemit regulations litigation (*NRDC* v. *EPA* and consolidated cases, No. 80-1607 [D.C. Cir., filed June 2, 1980]). On June 14, 1982, EPA published proposed rules which implemented the settlement agreement concerning the "common issues" affecting the NPDES, UIC, 404, and RCRA permit programs as well as several proposed rules affecting the NPDES permit program only (47 FR 25546). The final rules promulgated today address the concerns of the commenters to the proposed rules.

DATE: These regulations shall become effective September 1, 1983. For purposes of judicial review under the Clean Water Act, these regulations will be considered issued at 1:00 p.m. eastern time on September 15, 1983; see 45 FR 26894, April 22, 1980. In order to assist EPA to correct typographical errors, incorrect cross-references, and similar technical errors, comments of a technical and nonsubstantive nature on the final regulations may be submitted on or before November 1, 1983. The effective date of these regulations will not be delayed by consideration of such comments.

ADDRESS: Comments of a technical and nonsubstantive nature should be addressed to: Cathy O'Connell, Permits Division (EN-336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, Washington, D. C. 20460.

FOR FURTHER INFORMATION CONTACT: Cathy O'Connell, Permits Division (EN-336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, Washington, D. C. 20460. (202) 426-2970.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 7, 1979, EPA published final regulations establishing program requirements and procedures for the NPDES permit program. Shortly thereafter, on June 14, 1979, a number of petitioners representing major industrial trade associations, several of their member companies, and the Natural Resources Defense Council (NRDC) filed petitions for review of the regulations. Also on June 14, 1979, EPA published proposed regulations consolidating the requirements and procedures for five EPA permit programs, including the NPDES program under the Clean Water Act (CWA), the UIC program under the Safe Drinking Water Act (SDWA), State "dredge or fill" programs under Section 404 of the CWA, the Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), and the Prevention of Significant Deterioration (PSD) program under the Clean Air Act (CAA). Final Consolidated Permit Regulations were published on May 19, 1980. Again, these regulations were challenged in court. Petitions for review were filed in several Courts of Appeal and subsequently consolidated in the District of Columbia Circuit (*NRDC* v. *EPA*, and consolidated cases [No. 80-1607]). EPA held extensive discussions on all issues raised in the petitions and subsequently signed four separate settlement agreements with industry litigants. One covered only the UIC program, one all issues affecting the RCRA program, one the NPDES program, and the fourth covered issues which were common to at least two of the three programs involved in the litigation and issues which affect the definition of "new discharger" and its relationship to mobile drilling rigs under the NPDES program. Under the terms of the fourth agreement, referred to as the "Common Issues" settlement agreement, EPA published proposed rules on June 14, 1982. The final rules promulgated today reflect the intent of the "Common Issues" settlement agreement and address public comments received concerning the June 14, 1982, proposed revisions.

Several of the comments made on the proposed regulations were received from companies or organizations who were signatories to either the "Common Issues" settlement agreement or one of the settlement agreements specific to an EPA permit program.

Signatories to those settlement agreements generally agreed that to the extent EPA promulgated final regulations and preamble language which were substantially the same as and did not alter the meaning of language agreed to in the settlement agreements, the parties would drop their challenges to the regulations. Nonetheless, EPA did receive comments from signatories to the settlement agreement which requested further changes to the regulations than those agreed upon in the settlement agreements. In responding to the comments made, EPA in no way waives its right to require that signatories to the settlement agreements be held to those agreements, and in fact, expects good faith adherence to their terms.

Following the common preamble are five separate sections of regulatory language: Parts 122 and 123 covering the NPDES program; Parts 144 and 145 covering the UIC program; Part 233 covering the State "dredge or fill" programs under Section 404 of the CWA, Parts 270 and 271 covering the hazardous waste program under RCRA; and, Part 124, which covers the procedures for issuing, denying, modifying, revoking and reissuing, or terminating EPA-issued NPDES, UIC, 404, RCRA, and PSD permits.

The revisions implementing the "Common Issues" settlement agreement are presented in this manner to reflect the deconsolidation of these programs undertaken as part of the regulatory reform efforts of the President's Task Force on Regulatory Relief. In a final rule published in the **Federal Register** on April 1, 1983, 47 FR 14146, EPA "deconsolidated" what was formerly referred to as the Consolidated Permit Regulations. In that rule the Agency reorganized its presentation of several permit program requirements. While the rulemaking made no substantive changes to any of the regulations of the affected programs, it did result in a renumbering of several sections. Section numbers used in today's rulemaking are the new numbers published in that deconsolidation rulemaking. In the preamble each major section heading is followed by the section references for the NPDES, UIC, 404, and RCRA permit programs in that order. A separate section covering only NPDES issues is also included.

II. Common Issues

A. Signatories To Permit Applications and Reports (§ 122.22, § 144.32, § 233.6, § 270.11)

The May 19, 1980 permit regulations required permit applications submitted by corporations to be signed by a "principal executive officer of at least the level of vice president." Further, the regulations required that such officer had to personally examine the application and certify its truth, accuracy, and completeness based on an inquiry of those individuals who gathered the permit information.

1. *Level of Signer*

Today's revision, which is identical to the June 14, 1982 proposal, changes this requirement to allow permit applications to be signed by "a responsible corporate officer." This definition incorporates into the regulation EPA's interpretation of "executive officer of the level of vice president" adopted in a previously published policy statement (45 FR 562149, August 6, 1980). That statement clarified that an officer performing "policy-making functions" similar to those performed by a corporate vice-president could sign permit applications. The revision also allows the manager of one or more manufacturing, production, or operating facilities of a corporation to qualify as "a responsible corporate officer" if the facilities employ more than 250 persons or have gross national sales or expenditures exceeding $25 million, as long as the manager has been delegated the authority to sign permit applications in accordance with corporate procedures.

Several commenters questioned the rationale which EPA used to arrive at the 250 persons or $25 million criteria. These commenters argued that the criteria could be lowered (for example one commenter advocated a 100 persons

or $10 million criteria) without adversely affecting the company's concern and responsibility for compliance with environmental laws. Other commenters advocated language which would allow the corporation's "environmental officer" to sign permit applications without the restrictions on the size of the work force or the monetary transactions of the corporation.

EPA's goal in establishing the "signatory" requirement was to ensure high level corporate knowledge of a corporation's pollution control operations. In revising the signatory requirement in accordance with the language promulgated in today's rule, EPA recognized that some relief could be granted without compromising that goal. The intent of today's change is to provide relief from the economic and administrative burdens of having a corporation's top executive officers personally sign and be familiar with numerous permit applications for all its operations. Such problems are generally experienced by large corporations with facilities and operations spanning wide geographic areas. The cut-off criteria chosen by EPA will ensure that those plant managers who are authorized to sign permit applications have sufficient authority to direct the affairs of their facilities.

EPA does not agree with the comment which suggests that any "environmental manager" of a corporation be allowed to sign permit applications. It is not the intent of EPA's signatory requirement to designate field supervisors or facility operators to sign permit applications simply because they are located at or near the facility. They may have no ability to direct the activities of the corporation so as to ensure that necessary systems are established or actions taken to gather complete and accurate information. Rather, the signatory provision, as explained above, ensures involvement in the permit process by individuals authorized to make management decisions which govern the operation of the regulated facility. An "environmental manager" may not have sufficient responsibility and authority to direct corporate activities which guarantee that all necessary actions are taken to prepare a complete and accurate application. Of course, in cases where an "environmental officer" is an environmental vice president or comparable "responsible corporate officer" within the definition of today's rule, he would be authorized to sign permit applications.

2. *Certification*

The revisions also change the certification language which required the signer of the form to have personally examined and be familiar with all the information submitted with the permit application. Under the new certification language promulgated today, the person signing the form (the signer) must have some form of direction or supervision over the persons gathering the data and preparing the form (the preparers), although the signer need not personally nor directly supervise these activities. The signer need not be in the same corporate line of authority as the preparers, nor do the persons gathering the data and preparing the form need to be company employees (e.g., outside contractors can be used). It is sufficient that the signer has authority to assure that the necessary actions are taken to prepare a complete and accurate application form.

None of the comments received objected to the proposed change in the certification language; thus, it is unchanged from the proposed language. EPA believes this change will assure an adequate level of corporate involvement and responsibility in the permit application process while eliminating the requirement of personal examination by the signer of all information submitted with the permit application.

The immediate implementation of today's certification language in permit application and reporting forms is infeasible. Because many States and EPA regional offices have large supplies of existing forms which contain the old certification language, it is both administratively and economically impractical to immediately convert to forms containing today's certification language. Therefore, permit application and reporting forms which contain the old signatory language will continue to be used until all have been used up or until provision can be made to replace the forms with new ones containing today's signatory language. However, in order to allow permittees to use the new certification language prior to publication of new forms, the signer may cross out the old language and insert today's language. States and regional offices may also wish to prepare an addendum to permit application and reporting forms which contains the new signatory language.

It should be noted that the HWM program has proposed amendments to § 270.11(d) (formerly § 122.6(d)) which contain additional procedures for owners and operators of HWM facilities (see 47 FR 15304, April 8, 1982 and 47 FR 32038, July 23, 1982).

3. *Governmental Agencies*

Under the June 14 proposal, EPA solicited comments on whether the signatory requirement for public agencies should be amended. The U.S. Departments of the Interior and Agriculture objected to the retention of this signatory provision for Federal agencies, arguing that they are situated similarly to large private corporations and should be allowed the same "relief" as private corporations.

EPA believes that Federal officials responsible for agency operations covering widespread geographical or organizational units (similar to the Federal Regional Offices of many agencies) do experience problems similar to those of large private corporations and thus should also be entitled to relief. Where a Federal official has policy or decisionmaking authority for facilities under his widespread jurisdiction comparable to that of a "responsible corporate officer," that official would be authorized to sign permit applications.

Thus, under today's change a principal executive officer authorized to sign permit applications for a Federal agency will include the agency's chief executive officer and any senior executive officer having responsibility for the overall operations of a major geographic unit of the agency.

The intent of this change is to authorize senior agency officials comparable to EPA's own Regional Administrators to sign permit applications. Considering the information submitted by the two Federal agencies which commented on this regulation, EPA recognizes the State Directors of the Bureau of Land Management as the requisite level of authority intended in the federal signatory provision. In the case of the Forest Service, the Regional Forester would be the appropriate level for signatory authority. EPA does not consider the 122 Forest Supervisors of the Forest Service to have the required level of authority intended by today's change.

EPA does not believe that public notice and comment need be extended on the issue of the appropriate signatory level for Federal agencies. Comments were specifically solicited on the issue of providing relief to Federal agencies similar to that provided to private corporations. The comments received convinced EPA that such a change for Federal agencies is warranted.

EPA does not believe that the problem cited by industry petitioners and Federal agencies, namely the inconvenience of having a corporation's vice-president or Federal agency head personally sign and be familiar with each and every permit application covering a

corporation's or agency's numerous, far-flung operations across the country, is analogous to municipal and State operations. In the case of cities, even large cities, there are a limited number of permitted operations for which a "principal executive officer or ranking elected official" would need to be personally responsible. States also would have far fewer permit applications to deal with than a large corporation or Federal agency.

B. Duty To Mitigate (§ 122.41(d), § 233.7(d), § 270.30(d))

The May 19, 1980 permit regulations included a standard permit condition which required permittees to "take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance" with NPDES, UIC, 404 or RCRA permits. Industry petitioners feared this language could be interpreted to imply that this provision imposed an obligation to assume liability for medical costs for persons harmed by the results of noncompliance. EPA made clear in the preamble to the proposed revisions published on June 14, 1982 that this was not the intent of this provision. In addition, EPA proposed that the regulatory language be amended. In the case of NPDES and State 404 "dredge or fill" permits, the June 14 proposal focused on the permittee's obligations to "minimize or prevent" noncomplying discharges which have "a reasonable likelihood of adversely affecting human health or the environment." Under the proposed revisions, RCRA permittees would be required in the event of noncompliance to "take all reasonable steps to minimize releases to the environment" and to "carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment." No change to the May 19, 1980, provision was proposed for UIC permittees.

Many commenters expressed dissatisfaction with the revised language as written, citing the difficulty to enforce the provisions because the language is broad. In addition, commenters expressed dissatisfaction because the proposed language does not explicitly note that liability for medical costs for persons harmed as a result of noncompliance is not intended by these provisions.

EPA does not agree that the language of the provisions is so broad as to be unenforceable. The provisions clearly establish the principle that every permittee is responsible for compliance with his permit and is required to take mitigation measures when noncompliance with the permit presents a risk of environmental harm. EPA also disagrees that the issue of liability for medical costs need be explicitly incorporated in the regulatory language covering a permittee's duty to mitigate. The fact that medical liability is not intended by this provision has been noted several times in the rulemaking proposals and EPA believes that this explanation is sufficient.

A few commenters objected to the retention of the requirement "to minimize or correct any adverse impact resulting from noncompliance" for UIC permittees. They argued that the UIC program should be consistent with the duty to mitigate provisions adopted for the NPDES, State 404 "dredge or fill," and RCRA programs.

The June 14, 1982 rulemaking proposal on the "Duty to Mitigate" provision explained that EPA was not proposing to change this provision for purposes of the UIC program and, therefore, was not opening it up to public comment. Industry UIC petitioners withdrew their challenge to § 122.7(d) as part of the UIC settlement agreement. Accordingly, as EPA is adopting the proposed amendments to the NPDES, 404, and HWM programs in final form, the existing text of that section has been redesignated as § 144.51(d), applicable to UIC only.

C. Other Federal Statutes (§ 122.49, § 144.4, § 270.3)

The May 19, 1980 permit regulations listed a number of Federal statutes which may be applicable to the issuance of NPDES, UIC, or RCRA permits. The introductory paragraph to this provision stated that permits would be issued in a manner and contain conditions consistent with the requirements of the applicable Federal laws. In the proposed revision to this provision, EPA rewrote the introductory paragraph to make it clear that the Agency does not intend to condition or deny permits based on those statutes when such action is not appropriate under the statutes. Today's rule promulgates this introductory language unchanged from the proposal.

Those individuals and organizations which submitted comments on the rewritten introductory paragraph either interpreted it to mean that no permits would ever be conditioned or denied under the National Environmental Policy Act (NEPA) or other Federal statutes or that all permits must be conditioned by these Federal statutes. Neither of these results is intended by this provision. The principal purpose of this provision as promulgated today is to notify permit issuers of requirements that already exist and which may be applicable to particular permits. If other Federal statutes require action on the part of EPA in issuing permits, EPA will comply with the requirements of these statutes and will condition or deny permits accordingly.

Of course, in deciding to condition or deny a permit on the basis of an applicable Federal statute, it is not necessary that the Federal Statute explicitly require the condition or denial. For example, NEPA does not mandate that EPA deny an NPDES permit under the CWA in any particular circumstance, nor does it state how a permit must be conditioned. Nonetheless, EPA, in carrying out its responsibilities under NEPA for a comprehensive evaluation of a proposed action, may determine that denial of a permit in a given case is appropriate or that conditioning the permittee's discharge in some way is justified by the findings in an environmental impact statement (EIS). Today's rule does not alter EPA's responsibilities under other Federal statutes.

D. Continuation of Expired Federal Permits in Approved States (§ 270.51)

The May 19, 1980 permit regulations provide that if an EPA-issued permit expires in a State that has been approved as the permit-issuing authority, the permit does not continue in force unless State law explicitly authorizes such a continuation. If no such State provision exists, the facility is considered to be operating without a permit and is subject to enforcement action. Where EPA is the permit issuing agency, the Administrative procedure Act [5 U.S.C. 558(c)] automatically extends the permit until EPA acts on the permit renewal application if the applicant has submitted a timely and complete application prior to the expiration of the permit.

Industry petitioners requested that the regulations be amended to allow an EPA-issued permit, which expires in a State approved to administer the NPDES or RCRA program, to continue in force, irrespective of the provisions of State law, until the State reissues or denies the permit.

In the June 14, 1982 proposal EPA stated that although it cannot provide for the automatic continuation of Federally-issued NPDES permits upon approval of a State program, the Agency would adopt the following policy. If a State NPDES program has been approved, expired Federally issued permits do not remain in effect unless continued under State law. However, if the discharger, owner, or operator has submitted a timely and complete application for a renewal permit to the

State, and the State has not acted, EPA would refrain from initiating an enforcement action based on the applicant's failure to have a permit if the applicant continues to comply with the terms of the expired permit, unless the permitted activity presents an imminent and substantial endangerment to the environment or human health.

EPA recognized that this NPDES policy would not, nor could it, provide certain protection from citizen suits against facilities without required permits. However, in these circumstances, EPA would not expect a court to assess penalties if delays in permit reissuance were not due to failure of the facility owner or operator to submit required information. No adverse comments were received on this policy, thus today's policy is adopted as proposed.

In addition to the above policy, EPA proposed revisions to allow for the continuation of RCRA permits should the need arise. The proposed revision provided for automatic extension of EPA-issued RCRA permits, even after approval of State permit-issuing authority. No objections were raised to this change in the RCRA permit program, thus today's rule is promulgated as proposed.

Several commenters felt that an Agency enforcement policy similar to that provided for NPDES should be extended to the UIC program. The need for this policy has not been demonstrated with respect to the UIC program because no Federal program has been established as yet and, thus, no Federally-issued permits exist. UIC permits generally will be issued for a term of 10 years for Class I and V wells, and for the life of the facility for Class II and III wells. Given the anticipated duration of UIC permits, and the absence of a Federal UIC program, EPA does not feel it is necessary to extend this policy to the UIC program.

E. State Adoption of EPA Civil Penalty Policy (§ 123.27, § 145.13, § 233.28, § 271.16)

The May 19, 1980 permit regulations required that States adopt specific methods for calculating civil penalties. EPA proposed that the regulation delete specification of the methods for calculating penalties and require only that any civil penalty agreed upon by the State Director be "appropriate to the violation." A note explained that, to the extent the penalties assessed by the State are in amounts substantially inadequate in comparison to amounts EPA would have sought under certain facts, EPA may exercise its authority, when authorized by applicable statute, to initiate its own action for assessment of penalities. No objections to this proposal were received, thus today's rule is promulgated as proposed.

Two commenters, both parties to the Common Issues settlement agreement, noted that the proposed change to the note explaining the requirement for State adoption of EPA's Civil Penalty Policy did not contain the entire text of the language agreed to in the settlement agreement. The language referred to by these commenters was part of the existing regulation and explains various enforcement options available to the States. These enforcement remedies are not mandatory but are highly recommended. The omission of this language was unintentional. The note now contains the entire text.

F. Commencement of Operations Pending Hearing on Appeal (§ 124.60, § 124.119)

Section 124.60 governed the circumstances under which a new source, a new discharger, or a recommencing discharger, whose initial permit has been challenged in a formal hearing, may begin operations pending the outcome of the hearing. The proposed revision established more flexible measures by which the Presiding Officer might grant an "early operation order" which, nonetheless, maintains an adequate degree of environmental protection pending "final agency action" on a permit. Under the proposal the Presiding Officer would be authorized, when granting an early operation order, to impose conditions, in lieu of the conditions set by EPA, to maintain an adequate degree of environmental protection. These conditions could be permit conditions under administrative review, or could be more or less stringent requirements. In addition, a new section, applicable only to NPDES permittees, was proposed which would extend the same procedures for "early operation orders" to non-adversary panel hearings for sources covered by an individual permit. Another section, also applicable to NPDES permittees only, was proposed which would establish a special procedure applicable to mobile drilling rigs excluded from the "new discharger" classification.

The modification to these sections apply to RCRA permits in very limited circumstances. These sections apply to a RCRA permit only to the extent it has been consolidated with an NPDES permit in a formal hearing. No early operation or construction orders are allowed for RCRA permits that are not consolidated with a NPDES permit. Formal hearings are only available for the termination of RCRA permits unless the RCRA permit has been consolidated with an NPDES permit.

Some commenters objected to the language stating that the early operation order must be granted if "no party opposes." These commenters argued that the granting of an early operation order should be discretionary, not mandatory, especially in circumstances where the public is not a party to the proceedings and thus cannot object.

EPA believes it is appropriate to require an "early operation order" to be granted if no party objects to the order, particularly since permit appeals may create significant delays in final permit issuance. It should be noted that in any hearing, EPA itself is a party which can oppose the granting of an early operation order. Thus, the lack of a third party to the hearing does not guarantee that such orders will automatically be granted in cases in which only the permittee has challenged the permit.

An early operation order can be granted if the source or facility makes a three-part showing, that it is likely to receive a permit to operate, that the environment will not be irreparably harmed, and that discharge or operation pending final agency action is in the public interest. One commenter urged EPA to clarify the demonstrations necessary for orders authorizing construction of RCRA facilities saying that the demonstrations listed seemed to apply only to the NPDES program. All demonstrations required for an early operation order must be met by both NPDES and RCRA permittees prior to the issuance of such an order, whether the order is authorizing discharge in the case of NPDES or construction or operation in the case of RCRA permits. The words "construct/construction" have been added to § 124.60(a)(2)(i)–(iii) to make clear that such orders may authorize either construction or operation in the case of RCRA permits. In connection with this, EPA has dropped the last sentence of proposed § 124.60(a)(3). That sentence merely explained that where no party has challenged a construction-related permit term or condition of a RCRA permit, the Presiding Officer shall follow the requirements of § 124.60(a)(2) in granting an order authorizing construction. Since the language "construction/construction" has been added to § 124.60(a)(2) the second sentence to § 24.60(a)(3) is redundant and no longer necessary. Of course, no order may authorize construction if a construction-related RCRA permit condition has been challenged.

In the case of non-adversary panel hearings, it was argued that permittees covered by general permits should be allowed the same opportunity to obtain an "early operation order" as those provided for permittees covered by individual permits.

EPA feels that "early operation orders" are not appropriate in the case of general permits. Because general permits can authorize entire classes or categories of discharge, EPA believes that full administrative action, including the issuance of a final permit, should be completed before an early operation order is allowed.

One commenter argued that any contested conditions of a permit undergoing administrative review should be unenforceable. Another commenter objected to the proposal which would allow contested conditions to be unenforceable pending the outcome of the hearing or subsequent appeal; this commenter believed that all conditions of the permit, including contested conditions, should be enforceable while the permit is undergoing review.

EPA has previously explained its position for staying contested permit conditions pending the completion of agency administrative review, 45 FR 33414. In order to grant some relief to dischargers who are without a permit pending final Agency action, "early operation orders" under this section were authorized. Authorizing an early operation is thus a special privilege. Since the Presiding Officer must assure that any order granted provides adequate protection of the environment during the administrative review process, he needs broad discretion to impose appropriate conditions (even more stringent than the proposed permit, if necessary).

III. NPDES Issues

A. Need To Halt or Reduce Activity Not a Defense (§ 122.41(c))

Under the May 19, 1980 permit regulations a permittee's obligation to halt or reduce activity in order to maintain compliance with the conditions of its permit was addressed in two separate provisions. Section 122.7(c) of these regulations explained that it was not a defense to an enforcement action that it was necessary to halt or reduce the permitted activity to maintain compliance. In addition, § 122.60(b) required that upon reduction, loss, or failure of the treatment facility, a permittee, in order to maintain compliance with its permit limitations, must control production on all discharges or both until treatment is restored.

Industry litigants argued that, in some cases, a mandatory obligation to cease or reduce operation or discharges would be unreasonable. For example, the requirement to halt production was particularly troublesome to the electric utilities industry, which is required under some State laws to provide a continuous reliable supply of electric power. EPA agreed that the appropriateness of controlling production or discharge may vary with the situation and thus, is more suitably dealt with as a question of defense to liability in enforcement proceedings.

In order to carry out this intent EPA made changes to both of the provisions cited above. On April 5, 1982, 47 FR 15304, in a technical amendment to the regulations, EPA revised the caption of § 122.7(c) "Duty to Halt or Reduce Activity" to "Need to Halt or Reduce not a Defense," to clarify the intent of that section that a permittee will not be allowed to defend its noncompliance in an enforcement action on the ground that it would have had to halt or reduce its regulated activity.

In addition, the Agency determined that § 122.7(c) adequately addressed its intent with respect to this issue and that § 122.60(b) was therefore redundant and unnecessary. On June 14, 1982, 47 FR 25550, the Agency proposed to delete section 122.60(b) in its entirety.

Following the technical amendment of § 122.7(c) and the proposed deletion of § 122.60(b), the Agency on April 1, 1983 deconsolidated the May 19, 1980 regulations, 47 FR 14146. In deconsolidating the May 19, 1980 regulations the Agency made no substantive changes; it merely reformatted and renumbered the regulations. In this process then existing §§ 122.7(c) and 122.60(b) were combined and renumbered § 122.41(c). The combination of these sections did not affect EPA's June 14, 1982 proposal to delete then § 122.60(b), currently found in the second and third sentences of § 122.41(c) of the April 1, 1983 regulations. Having received no comments adverse to deleting this provision, today's rule makes final the proposed deletion.

One commenter did point out what appeared to be a discrepancy between the preamble of the June 14, 1982 proposed revisions and the proposed amendment to § 122.60(b). The preamble stated that § 122.60(b) was to be deleted in its entirety. Yet the proposed rulemaking included a § 122.60(b) which concerned a permittee's duty to mitigate adverse impacts resulting from permit violations. In the June 14, 1982 rulemaking EPA did in fact propose to delete then § 122.60(b) of the May 19, 1980 regulations. Because deletion of this section left an opening at § 122.60(b), EPA then proposed to move § 122.7(d) the Duty to Mitigate provision of the May 19, 1980 regulations, to this section, renumbering it new § 122.60(b). That section was subsequently redesignated § 122.41(d) by the April 1, 1983 deconsolidation rulemaking. Consistent with the proposed regulation changes, today's final rules delete the second and third sentence of § 122.41(c) of the April 1, 1983 regulations. The first sentence of this section remains in effect. Final rules affecting § 122.41(d) are explained elsewhere in today's rulemaking.

B. New Discharger Issues (§§ 122.2, 122.28)

Determining Date

Today's rules make two changes to the definition of "new discharger." The first would change the determining date for the application of the "new discharger" classification. Under the present definition, a "new discharger" is any source which is not a "new source," and which discharges pollutants on or after October 18, 1972 from a site for which it has never received a finally effective NPDES permit. The determining date of October 18, 1972 was tied to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500).

Industry petitioners argued that with the creation of the "new discharger" category on June 7, 1979, a new classification potentially subject to more stringent requirements was applied to many sources that had been in operation for years, but had not as yet received NPDES permits, though applications had been filed. In order to prevent this result the Agency proposed to revise the definition to change the triggering date to August 13, 1979, the effective date of the first NPDES regulations defining the "new discharger" classification. EPA received no comments opposed to this change; thus today's rule is promulgated as proposed.

Mobile Drilling Rigs

The definition of "new discharger" in then existing § 122.3 (currently § 122.2) specifically included mobile drilling rigs. Thus, each time a mobile drilling rig moved to a new unpermitted site, for which it is required to apply for a new NPDES permit, it was subjected once again to the new discharger requirements. The June 14, 1982 rulemaking proposed two major changes

to the regulations to address this problem. First, the proposed regulatory amendments established a general permitting scheme for oil and gas operations within the Outer Continental Shelf (OCS). The Agency's experience with the issuance of general permits for drilling operations in OCS lease sale areas in the Gulf of Mexico and off the coast of Southern California has been favorable and the use of general permits appears appropriate for other OCS areas. Therefore, section 122.28 (§ 122.59 of the May 19, 1980 regulations) was proposed to be amended to require EPA Regional Administrators to issue general permits for most discharges from oil and gas exploration and production facilities unless the use of a general permit is demonstrated to be clearly inappropriate. Second, because it will take some time before EPA can issue general permits for oil and gas facilities in all OCS lease sale areas, and because NPDES-approved States are not required to issue permits to oil and gas facilities in all OCS lease sale areas, EPA proposed to exclude mobile drilling rigs from the definition of "new discharger." The proposed exclusion covered all mobile exploratory drilling rigs operating in both offshore and coastal areas, and mobile developmental rigs operating in coastal areas. Mobile developmental rigs operating in any offshore area would continue to be included in the "new discharger" category.

Several commenters argued that developmental drilling rigs operating in offshore areas should not be included in the "new discharger" category. EPA has substantial reasons for treating developmental rigs operating offshore differently. Developmental rigs generally remain at a given site for longer periods of time than do exploratory rigs and have more advance notice before moving to new sites. Thus, the burdens of obtaining a new permit prior to moving to a new site are not as great as for exploratory rigs.

More importantly, developmental rigs pose more risk of harm to the marine environment than exploratory rigs. The volume of pollutants discharged by a developmental rig can be far greater than that from exploratory rigs, and movement to a new site could indeed constitute a significant new environmental harm. Although this is true for developmental activities in both coastal and offshore areas, EPA has an added responsibility under guidelines issued pursuant to section 403(c) of the Clean Water Act to consider the impact of discharges from offshore facilities on the marine environment. Section 403(c) is not applicable to discharges into coastal areas. In light of the increased volume of pollutants potentially discharged during developmental operations, EPA must often perform complex analyses pursuant to section 403(c) to develop adequate permit limitations and conditions to prevent unreasonable degradation of the marine environment. Due to this, EPA has decided that it is appropriate to continue to apply the potentially more stringent procedural requirements which acompany the "new discharger" classification to mobile developmental rigs operating in offshore areas. Thus developmental rigs discharging into offshore waters will continue to be included in the "new discharger" definition.

All mobile oil and gas drilling rigs operating in environmentally sensitive areas will continue to be considered "new dischargers" if they otherwise fit the definition. EPA believes that the commencement of operations in these environmentally sensitive areas (i.e., areas of biological concern) should be carefully examined before imposing appropriate permit limitations.

One commenter suggested that instead of EPA independently developing criteria to identify environmentally sensitive areas of concern on the OCS, these criteria should be subject to the ongoing development of a Memorandum of Understanding (MOU) between the Department of the Interior (DOI) and EPA. It is intended that this MOU will provide the mechanism for coordination of NPDES permit issuance and lease sale activities. EPA will most certainly consult with all interested parties, including DOI, in developing appropriate criteria to determine areas of biological concern on the OCS. However, the Agency does not believe it is necessary to include the development of this criteria in ongoing negotiations with DOI on the MOU in order to ensure DOI input in the process.

EPA proposed to revise § 122.28 (previously § 122.59) to require Regional Administrators to issue general permits, where appropriate, for most discharges from oil and gas exploration and production facilities. General permits will be used for oil and gas facilities in existing lease sale areas, as well as future lease sale areas established by the Minerals Management Service (MMS), the office within the DOI responsible for offshore leasing activities. The use of a general permit will eliminate the post-lease delay in permit issuance because sufficient information should be available to determine permit conditions without application information from individual operators. With sufficient information to determine permit conditions, general NPDES permits may be issued for entire tracts or groups of tracts offered in OCS lease sales.

Four commenters objected to the issuance of general permits either prior to or at the time of the lease sale. The objections ranged from opposition because no general uniformity exists in OCS marine life to a concern that public input in the development of permit conditions would be bypassed. All of the commenters opposed to the concept of general permits feared that such permits would be issued without the accumulation of adequate information.

EPA is committed to the issuance of all permits when, and only when, an adequate amount of information has been gathered with which to determine permit conditions. The use of general permits is an administrative mechanism designed to minimize or eliminate administrative delays in those instances where no useful purpose would be served by issuing individual permits. In each and every case, where a permit, whether individual or general, is issued, EPA will ensure that all necessary and proper public participation measures are taken prior to the issuance of a permit.

Several of EPA's own Regional Offices were concerned about the timing for issuance of general permits. The proposed regulations provided that when petitioned to issue a general permit, the Regional Administrator should issue a project decision schedule providing for the issuance of the final general permit no later than the date of final notice of lease sale or six months after the date of the request. EPA's Regional Offices responsible for the issuance of the general permits pointed out that for some areas, sufficient information to determine appropriate permit limitations may not be available even though an EIS has been completed on the lease sale area. For other areas, final notices of lease sale have been issued by the Department of the Interior (DOI) prior to proposal of these regulations. In addition, DOI has approved significant revisions in its OCS oil and gas leasing program since the time of the proposal of changes to the NPDES regulations in June 1983 which could affect EPA actions. The new leasing program now offers lease sales in whole planning areas which may include ten to over 100 million acres. The new program processes a lease sale under an accelerated, streamlined timeframe. Resources may also be a problem where numerous lease

sales are issued by DOI. In all these cases, it may be impossible for EPA to issue general permits within the timeframes proposed in the regulations.

EPA has, through this regulation, recognized the importance of prompt precessing of OCS permitting activities. As pointed out in the preamble to the proposal, the Regional Administrator should strive to meet all deadlines projected in project decision schedules. However, such decision schedules do not impose binding deadlines upon EPA. There may be situations in which factors beyond the control of EPA (e.g., the situations mentioned above by EPA Regional Offices) will delay issuance of final permits beyond the dates projected in the regulation. Because the regulation does not impose binding deadlines and is flexible enough to allow EPA to address such problem situations, EPA has not changed the proposed language in this final rule. Regional Administrators should work to ensure that permitting is tied, to the maximum extent possible, to lease sale actions.

Finally, although EPA's proposal committed the Agency to issue general permits for offshore oil and gas facilities, EPA's Regional Offices have pointed out that individual permits may be a more practicable option for permitting continental offshore stratigraphic test wells (COST wells). Stratigraphic test wells are drilled to collect seismic and scientific information on the underlying geological strata in a lease sale area. Such wells must generally be drilled at least 60 days prior to the lease sale; usually only one well is drilled per lease area. In Alaska, where the drilling seasons are severely restricted by the weather, a COST well is often drilled at least a year in advance of the lease sale. The Environmental Impact Statement developed for the lease sale area is not available that far in advance of the sale. It is generally feasible and often less time-consuming under these circumstances to develop an individual permit that clearly restricts discharges to a single COST well. Since the intent of this regulation is to expedite the issuance of NPDES permits for offshore oil and gas activities, in circumstances where an individual permit can be issued for a COST well more expeditiously than a general permit, a Region may choose this option.

EPA has determined that each of the above discussed comments can adequately be addressed within the context of the proposed regulations and therefore has promulgated final rules which are identical to the proposed rules.

C. Modification of NPDES Permits (§ 122.62)

A new modification provision was proposed to allow NPDES permits which became final after August 19, 1981, to be modified to conform to the final rules adopted under the settlement agreement for, § 122.7(c) and 122.60(b) of the May 19, 1980 regulations (these sections correspond to § 122.41 (c) and (d) of the deconsolidated NPDES regulations). The cut-off date will prevent unnecessary modifications which could place an unreasonable strain on Agency or State resources. No adverse comments were received on this proposal; thus, the regulation is promulgated unchanged from the proposal.

IV. Effective Date

Section 553(d) of the Administrative Procedure Act (APA) requires publication of a substantive rule not less than 30 days before its effective date. In addition, section 3010(b) of RCRA provides that EPA's hazardous waste regulations, and revisions thereto, take effect six months after their promulgation. The purpose of these requirements is to allow permittees sufficient lead time to prepare to comply with new regulatory requirements. For the amendments proposed today, however, EPA believes that an effective date 30 days to six months after promulgation would cause unnecessary disruption in the implementation of the regulations and would be contrary to the public interest. Section 553(d)(1) of the APA provides an exemption from the requirement to delay the effective date of a promulgated regulation for 30 days in instances where the regulation will relieve restrictions on the regulated community. These amendments relieve restrictions on permittees under the NPDES, UIC, 404, and RCRA programs by providing greater flexibility in meeting the requirements of the programs. EPA believes that these are not the type of regulations that Congress had in mind when it provided a delay between the promulgation and the effective date of revisions to regulations. Therefore, EPA is making these rules effective today.

V. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. These amendments clarify the meaning of several generic permit requirements and generally make the regulations more flexible and less burdensome for affected permittees. They do not satisfy and of the criteria specified in section 1(b) of the Executive Order and, as such, do not constitute major rulemaking. This is not a major regulation. This regulation was submitted to the Office of Management and Budget (OMB) for review.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, U.S.C. 601 et seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of entities. Today's amendments to the regulations clarify the meaning of several generic permit requirements and otherwise make the regulations more flexible and less burdensome for all permittees. Accordingly I hereby certify, pursuant to 5 U.S.C. 605(b) that these amendments will not have a significant impact on a substantial number of small entities.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control, Confidential business information.

40 CFR Part 123

Indians—lands, Reporting and recordkeeping requirements, Water pollution control, Intergovernmental relations, Penalties, Confidential business information.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Indians—lands.

40 CFR Part 144

Administrative practice and procedure, Reporting and recordkeeping requirements, Confidential business information, Water supply.

40 CFR Part 145

Indians—lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water supply.

40 CFR Part 233

Administrative practice and procedure, Reporting and recordkeeping requirements, Confidential business information, Water supply, Indians—lands, Intergovernmental relations,

Penalties, Confidential business information.

40 CFR Part 270

Administrative practice and procedure, Reporting and recordkeeping requirements, Hazardous materials, Waste treatments and disposal, Water pollution control, Water supply, Confidential business information.

40 CFR Part 271

Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: August 22, 1983.

Alvin L. Alm,

Deputy Administrator.

Authorities: Clean Water Act (33 U.S.C. 1251 et seq.), Safe Drinking Water Act (42 U.S.C. 300f et seq.), Clean Air Act (42 U.S.C. 7401 et seq.), Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

40 CFR Parts 122, 123, 124, 144, 145, 233, 270, and 271 are amended as follows:

PART 122—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

40 CFR Part 122 is amended as follows:

1. Section 122.2 is amended by revising the definition of "New discharger" as follows:

§ 122.2 Definitions.

* * * * *

"New discharger" means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants;"

(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(c) Which is not a "new source;" and

(d) Which has never received a finally effective NDPES permit for discharges at that "site."

This definition includes an "indirect discharger" which commences discharging into "waters of the United States" after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a "site" for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a "site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area or biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122(a) (1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

* * * * *

2. Section 122.22 is amended by revising paragraphs (a)(1), (a)(3), and (d), and adding a note following (a)(1) as follows:

§ 122.22 Signatories to permit applications and reports.

(a) * * *

(1) *For a corporation:* by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who perfoms similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note: EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in § 122.22(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under § 122.22(a)(1)(ii) rather than to specific individuals.

(2) * * *

(3) *For a municipality, State, Federal, or other public agency:* by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

* * * * *

(d) *Certification.* Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

3. Section 122.28 is amended by adding a new paragraph (c) as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(c) *Offshore Oil and Gas Facilities* (Not applicable to State programs.) (1) The Regional Administrator shall, except as provided below, issue general permits covering discharges from offshore oil and gas exploration and production facilities within the Region's jurisdiction. Where the offshore area includes areas, such as areas of biological concern, for which separate permit conditions are required, the Regional Administrator may issue separate general permits, individual permits, or both. The reason for separate general permits or individual permits shall be set forth in the appropriate fact sheets or statements of basis. Any statement of basis or fact sheet for a draft permit shall include the Regional Administrator's tentative determination as to whether the permit applies to "new sources," "new dischargers," or existing sources and the reasons for this determination, and the Regional Administrator's proposals as to areas of biological concern subject either to separate individual or general permits. For Federally leased lands, the general permit area should generally be no less extensive than the lease sale area defined by the Department of the Interior.

(2) Any interested person, including any prospective permittee, may petition the Regional Administrator to issue a general permit. Unless the Regional Administrator determines under paragraph (c)(1) that no general permit is appropriate, he shall promptly provide a project decision schedule covering the issuance of the general permit or permits

for any lease sale area for which the Department of the Interior has published a draft environmental impact statement. The project decision schedule shall meet the requirements of § 124.3(g), and shall include a schedule providing for the issuance of the final general permit or permits not later than the date of the final notice of sale projected by the Department of the Interior or six months after the date of the request, whichever is later. The Regional Administrator may, at his discretion, issue a project decision schedule for offshore oil and gas facilities in the territorial seas.

(3) Nothing in this paragraph (c) shall affect the authority of the Regional Administrator to require an individual permit under § 122.28(b)(2)(i)(A) through (F).

4. Section 122.41 is amended by revising paragraphs (c) and (d) as follows:

§ 122.41 Conditions applicable to all permits (applicable to State programs, see §123.25)

* * * * *

(c) *Need to Halt or Reduce not a Defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) *Duty to Mitigate.* The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

* * * * *

5. Section 122.49 is amended by revising the introductory paragraph as follows:

§ 122.49 Considerations under Federal law.

The following is a list of Federal laws that may apply to the issuance of permits under these rules. When any of these laws is applicable, its procedures must be followed. When the applicable law requires consideration or adoption of particular permit conditions or requires the denial of a permit, those requirements also must be followed.

* * * * *

6. Section 122.62 is amended by adding a new paragraph (a)(15) as follows:

§122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).

(a) * * *

(15) When the permit becomes final and effective on or after August 19, 1981, if the permittee shows good cause for the modification, to conform to changes respecting the following regulations issued under the Settlement Agreement dated November 16, 1981, in connection with *Natural Resources Defense Council* v. *EPA*, No. 80–1607 and consolidated cases: § 122.41(c) and (d).

* * * * *

PART 123—STATE PROGRAM REQUIREMENTS

40 CFR Part 123 is amended as follows:

1. Section 123.27 is amended by revising paragraph (c) and adding a new paragraph to the beginning of the note following paragraph (c) as follows:

§ 123.27 Requirements for Enforcement Authority.

* * * * *

(c) A civil penalty assessed, sought, or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation.

Note.—To the extent that State judgments or settlements provide penalties in amounts which EPA believes to be substantially inadequate in comparison to the amounts which EPA would require under similar facts, EPA, when authorized by the applicable statute, may commence separate actions for penalties.

* * * * *

PART 124—PROCEDURES FOR DECISION-MAKING

40 CFR Part 124 is amended as follows:

1. Amend paragraph (g) of § 124.3 by removing the word "or" before the words "major NPDES new discharger," and by adding the phrase "or a permit to be issued under provisions of § 122.28(c)" after the words "new discharger," and before the words "the Regional Administrator shall * * *".

2. Section 124.60 is amended by revising paragraph (a)(2) and adding new paragraphs (a)(3) and (c)(7) as follows:

§ 124.60 Issuance and effective date and stays of NPDES permits.

* * * * *

(a) * * *

(2) Whenever a source or facility subject to this paragraph or to paragraph (c)(7) of this section has received a final permit under § 124.15 which is the subject of a hearing request under § 124.74 or a formal hearing under § 124.75, the Presiding Officer, on motion by the source or facility, may issue an order authorizing it to begin discharges (or in the case of RCRA permits, construction or operations) if it complies with all uncontested conditions of the final permit and all other appropriate conditions imposed by the Presiding Officer during the period until final agency action. The motion shall be granted if no party opposes it, or if the source or facility demonstrates that:

(i) It is likely to receive a permit to discharge (or in the case of RCRA permits, to operate or construct) at that site;

(ii) The environment will not be irreparably harmed if the source or facility is allowed to begin discharging (or in the case of RCRA, to begin operating or construction) in compliance with the conditions of the Presiding Officer's order pending final agency action; and

(iii) Its discharge (or in the case of RCRA, its operation or construction) pending final agency action is in the public interest.

(3) *For RCRA only,* no order under paragraph (a)(2) may authorize a facility to commence construction if any party has challenged a construction-related permit term or condition.

* * * * *

(c) * * *

(7) If for any offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig which has never received a finally effective permit to discharge at a "site," but which is not a "new discharger" or a "new source," the Regional Administrator finds that compliance with certain permit conditions may be necessary to avoid irreparable environmental harm during the administrative review, he may specify in the statement of basis or fact sheet that those conditions, even if contested, shall remain enforceable obligations of the discharger during administrative review unless otherwise modified by the Presiding Officer under paragraph (a)(2) of this section.

3. Section 124.119 is amended by adding new paragraphs (c) and (d) as follows:

§ 124.119 Presiding Officer.

* * * * *

(c) Whenever a panel hearing will be held on an individual draft NPDES permit for a source which does not have an existing permit, the Presiding Officer, on motion by the source, may issue an order authorizing it to begin discharging if it complies with all conditions of the draft permit or such other conditions as may be imposed by the Presiding Officer in consultation with the panel. The motion shall be granted if no party opposes it, or if the source demonstrates that:

(1) It is likely to receive a permit to discharge at that site;

(2) The environment will not be irreparably harmed if the source is allowed to begin discharging in compliance with the conditions of the Presiding Officer's order pending final agency action; and

(3) Its discharge pending final agency action is in the public interest.

(d) If for any offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig which has never received a finally effective permit to discharge at a "site," but which is not a "new discharger" or "new source," the Regional Administrator finds that compliance with certain permit conditions may be necessary to avoid irreparable environmental harm during the nonadversary panel procedures, he may specify in the statement of basis or fact sheet that those conditions, even if contested, shall remain enforceable obligations of the discharger during administrative review unless otherwise modified by the Presiding Officer under paragraph (c) of this section.

PART 144—REQUIREMENTS FOR UNDERGROUND INJECTION CONTROL PROGRAMS UNDER THE SAFE DRINKING WATER ACT

40 CFR Part 144 is amended as follows:

1. Section 144.4 is amended by revising the introductory paragraph as follows:

§ 144.4 Considerations under Federal law.

The following is a list of Federal laws that may apply to the issuance of permits under these rules. When any of these laws is applicable, its procedures must be followed. When the applicable law requires consideration or adoption of particular permit conditions or requires the denial of a permit, those requirements also must be followed.

* * * * * *

2. Section 144.32 is amended by revising paragraph (a)(1); adding a new note following paragraph (a)(1); revising paragraph (a)(3); and adding a new paragraph (d) as follows:

§144.32 Signatories to permit applications and reports.

(a) * * *

(1) *For a corporation:* by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decisionmaking functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note.—EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in § 144.32(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under § 144.32(a)(1)(ii) rather than to specific individuals.

(2) * * *

(3) *For a municipality, State, Federal, or other public agency:* by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

* * * * *

(d) *Certification.* Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

PART 145—REQUIREMENTS FOR UNDERGROUND INJECTION CONTROL PROGRAMS UNDER THE SAFE DRINKING WATER ACT

40 CFR Part 145 is amended as follows:

1. Section 145.13 is amended by revising paragraph (c) and adding a new paragraph to the beginning of the note following paragraph (c) as follows:

§ 145.13 Requirements for enforcement authority.

* * * * *

(c) A civil penalty assessed, sought, or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation.

Note.—To the extent that State judgments or settlements provide penalties in amounts which EPA believes to be substantially inadequate in comparison to the amounts which EPA would require under similar facts, EPA, when authorized by the applicable statute, may commence separate actions for penalties.

* * * * *

PART 233—DREDGE OR FILL (404) PROGRAM UNDER SECTION 404 OF THE CLEAN WATER ACT

40 CFR Part 233 is amended as follows:

1. Section 233.6 is amended by revising paragraphs (a)(1), (a)(3), and (d) and adding a new note following (a)(1) as follows:

§ 233.6 Signatories to permit applications and reports.

(a) * * *

(1) *For a corporation:* by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy—or decisionmaking functions for the corporation, or (ii) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note.—EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in § 233.6(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under § 233.6(a)(1)(ii) rather than to specific individuals.

(2) * * *

(3) *For a municipality, State, Federal, or other public agency:* by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations

of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

* * * * *

(d) *Certification.* Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

2. Section 233.7 is amended by revising paragraph (d) as follows:

§ 233.7 Conditions applicable to all permits.

* * * * *

(d) The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. Section 233.28 is amended by revising paragraph (c) and adding a new paragraph to the beginning of note following paragraph (c) as follows:

§ 233.28 Requirements for enforcement authority.

* * * * *

(c) A civil penalty assessed, sought, or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation.

Note.—To the extent that State judgments or settlements provide penalties in amounts which EPA believes to be substantially inadequate in comparison to the amounts which EPA would require under similar facts, EPA, when authorized by the applicable statute, may commence separate actions for penalties.

* * * * *

PART 270—EPA-ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

40 CFR Part 270 is amended as follows:

1. Section 270.3 is amended by revising the introductory paragraph as follows:

§ 270.3 Considerations under Federal law.

The following is a list of Federal laws that may apply to the issuance of permits under these rules. When any of these laws is applicable, its procedures must be followed. When the applicable law requires consideration or adoption of particular permit conditions or requires the denial of a permit, those requirements also must be followed.

* * * * *

2. Section 270.11 is amended by revising paragraph (a)(1), (a)(3), and (d) and adding a new note following (a)(1) as follows:

§ 270.11 Signatories to permit applications and reports.

(a) * * *

(1) *For a corporation:* by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decisionmaking functions for the corporation, or (ii) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note.—EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in § 270.11(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under § 270.11(a)(1)(ii) rather than to specific individuals.

(2) * * *

(3) *For a municipality, State, Federal, or other public agency:* by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

* * * * *

(d) *Certification.* Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to be the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

3. Section 270.30 is amended by revising paragraph (d) as follows:

§ 270.30 Conditions applicable to all permits.

* * * * *

(d) In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

* * * * *

4. Section 270.51 is amended by revising a new paragraph (d) as follows:

§ 270.51 Continuation of expiring permits.

* * * * *

(d) *State Continuation.* In a State with an hazardous waste program authorized under 40 CFR Part 271, if a permittee has submitted a timely and complete application under applicable State law and regulations, the terms and conditions of an EPA-issued RCRA permit continue in force beyond the expiration date of the permit, but only until the effective date of the State's issuance or denial of a State RCRA permit.

PART 271— EPA-ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

40 CFR Part 271 is amended as follows:

1. Section 271.16 is amended by revising paragraph (c) and adding a new paragraph to the beginning of the note following paragraph (c) as follows:

§ 271.16 Requirements for enforcement authority.

* * * * *

(c) A civil penalty assessed, sought, or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation.

Note.—To the extent the State judgments or settlements provide penalties in amounts which EPA believes to be substantially inadequate in comparison to the amounts which EPA would require under similar facts, EPA, when authorized by the applicable

statute, may commence separate actions for penalties.

* * * * *

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BILLING CODE 6560-50-M

40 CFR Part 271

[SW-6-FRL 2427-2]

Hazardous Waste Management Programs, Texas; Interim Authorization Phase II, Component C

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Hazardous Waste Management Program.

SUMMARY: The State of Texas has applied for Interim Authorization, Phase II, Component C, permitting program for land disposal facilities. EPA has reviewed Texas' application for Phase II, Interim Authorization, Component C, and has determined that Texas' hazardous waste program is substantially equivalent to the Federal program covered in Component C. The State of Texas is hereby granted Interim Authorization for Phase II, Component C, to operate the State's hazardous waste program covered by Component C in lieu of the Federal program in the State of Texas.

EFFECTIVE DATE: Interim Authorization for Phase II, Component C, for Texas shall become effective September 1, 1983.

FOR FURTHER INFORMATION CONTACT: H. J. Parr, Hazardous Materials Branch, Air and Waste Management Division, Environmental Protection Agency, 1201 Elm St., Dallas, Texas 75270, Telephone (214) 767-2645.

SUPPLEMENTARY INFORMATION:

Background

In the May 19, 1980, **Federal Register** (45 FR 33063) the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), to protect human health and the environment from the improper management of hazardous waste. RCRA includes provisions whereby a State agency may be authorized by EPA to administer the hazardous waste program in that State in lieu of a Federally administered program. For a State program to receive Final Authorization, its hazardous waste program must be fully equivalent to and consistent with the Federal program under RCRA. In order to expedite the authorization of State programs, RCRA allows EPA to grant a State Interim Authorization if its program is substantially equivalent to the Federal program. During Interim Authorization, a State can make whatever legislative or regulatory changes that may be needed for the State's hazardous waste program to become fully equivalent to the Federal program. The Interim Authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program takes effect.

Phase I regulations were published on May 19, 1980, and became effective on November 19, 1980. The Phase I regulations include the identification and listing of hazardous wastes, standards for generators and transporters of hazardous waste, standards for owners and operators of treatment, storage and disposal facilities, and requirements for State Programs. The Phase II regulations cover the procedures for issuing permits under RCRA and the standards that will be applied to treatment, storage, and disposal facilities in preparing permits. In the July 26, 1982, **Federal Register** (47 FR 32373), the Environmental Protection Agency announced that States could apply for Component C of Phase II, Interim Authorization. Component C, published in the **Federal Register** July 26, 1982 (47 FR 32274), contains standards for permitting facilities that dispose hazardous waste in waste piles, surface impoundments, land treatment, and landfills.

The State of Texas received Interim Authorization for Phase I on December 24, 1980, and Interim Authorization for Phase II, Components A & B, on March 23, 1982.

Draft Application

The State of Texas submitted its draft application for Phase II, Component C, Interim Authorization, on January 4, 1983. After detailed review, EPA transmitted comments to the State on February 2, 1983.

Three major issues were identified which the State was required to correct before being authorized. These issues involved the substantial equivalence of the State's requirements with EPA's program requirements in the following areas: (1) The construction of a new facility prior to the issuance of a permit; (2) TDWR's requirements for groundwater monitoring; and (3) necessary additions to the Memorandum of Agreement.

Each of these issues was resolved at the time of submittal of the complete application. Specifically, the Texas Legislature amended the statute so that the state could require permits for construction related elements of all hazardous waste management facilities; TDWR amended its groundwater monitoring requirements to align with those of EPA; and a Memorandum of Agreement was submitted.

On May 16, 1983, Texas submitted to EPA an official application for Phase II, Component C. An EPA review team consisting of both Headquarters and Regional personnel made a detailed analysis of Texas' hazardous waste management program.

EPA comments were forwarded to the State on June 30, 1983. No major questions were raised in the comments; however, some minor clarifications were requested. By letter dated July 13, 1983, the State responded to all the issues raised by EPA.

I conclude that the Texas application for Interim Authorization to operate the RCRA Phase II, Component C program meets all of the statutory and regulatory requirements and as such I approve this authorization.

Public Hearing and Comment Period

As noticed in the **Federal Register** on May 27, 1983, EPA gave the public until July 7, 1983, to comment on the State's application. EPA also issued a public notice for a hearing to be held in Austin, Texas on July 14, 1983, if significant public interest was expressed. EPA received requests to hold the hearing from seven (7) public interest groups and one (1) individual.

EPA found that there was significant public interest in holding a hearing on the Texas application for Phase II, Component C, Interim Authorization. Consequently on the evening of July 14, 1983, in Austin, Texas, EPA held such a public hearing and four presentations were made at that time. In addition, Region VI received eleven (11) written comments on the Texas application. Because of the interest exhibited, the comment period was extended by the hearing officer until July 21, 1983.

All comments whether presented at the hearing or in writing, were considered before reaching a decision on the Texas application for Phase II Interim Authorization for Component C.

None of the commenters opposed granting the state of Texas authorization. Eight (8) commenters specifically supported the authorization and urged EPA to expeditiously grant the authorization. Six (6) commenters made comments which were not specific to the authorization decision and one commenter supported the concept of authorization both in general and for