



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 7 2003

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Construction General Permit Enforcement

FROM: John Peter Suarez
Assistant Administrator

A handwritten signature in black ink, appearing to read "John Peter Suarez", written over the printed name and title.

TO: Regional Administrators, Regions I - X

This memorandum is to inform you of the pending lack of a Construction General Permit for construction activities one acre and above and to alert you to the Environmental Protection Agency's ("EPA") current position on our civil enforcement response to this situation. The current Construction General Permit expired February 17, 2003, and the new permit is not anticipated to be finalized until late spring. This lack of a new permit will leave all construction sites from one to five acres (these sites are not required to have permit coverage until March 10, 2003) and new construction sites over five acres without the ability to gain coverage under a permit for those States, Territories and Tribes where EPA is the permitting authority. Construction sites over five acres - that have submitted a notice of intent to comply prior to February 17th - will continue to have coverage under the existing permit.

EPA has decided to make administrative or civil enforcement for lack of permit coverage against these dischargers a low priority because a new Construction General Permit has not been promulgated. This prioritization does not apply to criminal violations or to situations where there are egregious circumstances, such as those resulting in serious actual harm or which may present an imminent and substantial endangerment to public health or the environment or where no best management practices are in place to protect public health or the environment. The Agency also reserves the right, at any time, to exercise its enforcement discretion with respect to a specific discharge should circumstances warrant.

This low enforcement priority approach only applies where dischargers are implementing certain practices which would ordinarily be required by a permit - including, but not limited to storm water pollution prevention plan development and implementation and proper installation and maintenance of best management practices.

If you have any questions about this matter please contact Walker Smith, Director of the Office of Regulatory Enforcement, Mark Pollins, Director of the Water Enforcement Division or Pamela Mazakas at (202) 564-4028 or Roger Gorke at (202) 564-0470.

cc: G. Tracy Mehan, III, Assistant Administrator, Office of Water
Robert E. Fabricant, General Counsel