General Permit Program Guidance

Permits Division
Office of Wastewater Management
U.S. Environmental Protection Agency

Note to Readers

In February 1988, EPA issued the General Permit Program Guidance. In June 1989, the Permits Division issued a memorandum regarding the development of State NPDES general permit programs. The memorandum and attached materials can be found at pages 1 through 28 of this package. The 1988 guidance can be found at pages 29 through 131.

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

OFFICE OF WATER

JUN 13 1989

MEMORANDUM

SUBJECT: Development of State NPDES General Permit Programs

FROM: Cynthia Dougherty, Director
Permits Division (EN-336)

TO: Water Management Division Directors
NPDES State Directors

The Permits Division is seeking to increase State interest in general permit authority. We have taken several steps to increase the availability of information concerning State general permit programs and to simplify the process of obtaining program authority. In February 1988, the Permits Division issued the *General Permit Program Guidance and today we are distributing the attached program authorization summary. We believe NPDES States should review this information and consider adding this key element to their NPDES programs.

The General Permit Program Guidance (Guidance) was issued to provide a streamlined approach to the general permit process. The goal was to provide a centralized source of information about the general permit process and obtaining general permit authority, and to simplify the existing procedures for the development and oversight of general permits. We have found, however, that questions still remain regarding the State program approval process. To address these concerns, we are issuing the attached package on the State general permit program approval process.

A prime example of where general permits can be very useful is in dealing with stormwater discharges. As you are aware, on December 7, 1988, EPA proposed regulations covering stormwater discharges associated with industrial activity. One of the most frequently asked questions at each of six public meetings conducted during the comment period concerned general permit application. General permit authority is a key program element for successful implementation of the stormwater group application

* 1988 General Permit Program Guidance Attached

process and may be essential for dealing with large numbers of stormwater permit applications for construction activities. The ability to employ general permits will become even more important when the stormwater moratorium ends in October 1992 and all other stormwater point sources will be subject to permit requirements.

The attached State General Permit Program Development summary describes the approval process and the necessary requirements which must be met prior to approval of a State general permit program. The cover document briefly explains these requirements. The package also includes model documents which can be used to develop a submission for general permit authority, as well as a copy of the federal general permit regulations and the Guidance. These materials are provided with the intent to facilitate and promote consistency in the development of general permit programs.

The Permits Division remains committed to assisting interested States in obtaining general permit approval. We urge NPDES States without general permit programs to carefully consider the benefits of receiving authorization to issue general permits.

If you have any questions regarding general permits or the approval process, please call me (FTS/202 475-9545) or have your staff contact Kevin Smith (FTS/202 475-9516) of this office.

Attachments

STATE GENERAL PERMITS PROGRAM DEVELOPMENT

General permit authority is available to NPDES States. The program is an administrative tool to simplify and reduce the burden of regulating certain types of similar discharges, for example, storm water. The Office of Water Enforcement and Permits, Permits Division, is committed to assisting States in receiving authorization for general permit programs. In February, 1988, Permits Division issued the General Permits Program Guidance (Guidance) to facilitate State program approval. EPA is now issuing this document which is intended to outline the federal general permits program and the requirements and necessary submissions for State program approval.

USES/BENEFITS OF GENERAL PERMITS

- o Some examples of existing general permits:
  - offshore oil and gas (Regions IV, VI, IX, and X)
  - concentrated animal feedlots (Regions VIII and IX)
  - construction activities and hydrostatic testing (Region VIII)
- o General permits also can cover storm water discharges from industrial and construction activities.
- o A list of draft and final general permits is included in the Guidance.

GENERAL PERMITS PROGRAM — IMPLEMENTATION AND USE (40 CFR §122.28)

A. Sources which may be covered by general permits:

- o Separate storm water discharges, or
- o A category of point source dischargers that satisfy the following 40 CFR §122.28(a)(2) criteria:
  - same or substantially similar types of operations;
  - similar wastestreams;
  - same effluent limitations;
  - same or similar monitoring requirements; and
  - suitability of use of general permit.
- o Not limited to "minor" sources

B. General permits are usually issued for specific geographic areas such as designated planning areas under §§208 and 303 of the CWA, sewer districts, or city, county, or State political boundaries.

C. General permits must be developed based upon applicable effluent guidelines or a BPJ determination and must meet State water quality standards and any Ocean Discharge Criteria Evaluation (see CWA §403(c)) requirements).

D. Tracking system for general permits is required. Agency recommends use of the EPA Permit Compliance System (PCS).

E. One limitation on the use of general permits has been the difficulty associated with meeting the water quality requirements of waters with different designated uses over a large geographic area. In such instances, multiple general permits may be necessary.

F. The Director may determine that certain discharges within the scope of a general permit nonetheless may be more appropriately regulated through the use of an individual permit. In these circumstances, the Director may require the dischargers to obtain an individual permit.

G. General permits must follow procedures equivalent to 40 CFR Part 124 notice and comment requirements.

H. Notification requirements for permittees:

o EPA recommends that States require dischargers wanting to be covered by a general permit to submit a Notice of Intent (NOI) to be covered.

o Some advantages of using an NOI:

- it identifies permittees covered by the general permit,
- it may be used as screening mechanism to determine whether general or individual permit is more appropriate for the applicant, and
- it assures that permittees understand their pollution control obligation.

I. Development and oversight of general permits by States and EPA

1. Authorized States

o General permits can only be issued in NPDES approved States if the approval includes general permit authority.

o The State develops and issues the general permit.

o Proposed permits must be submitted to EPA for review and concurrence in the same manner as with individual permits.

2. EPA Regional Offices

o Regional Offices develop and issue general permits in non-NPDES States (note - EPA Regional Offices cannot issue general permits covering dischargers in States with NPDES authority, even if the State does not have general permit authority).

o Regional Office oversees State development of general permits.

o Regions assist NPDES States to obtain general permit authority.

3. EPA Headquarters' role:

   o As noted in the Guidance, Headquarters only reviews general permit applications for offshore oil and gas and other general permits determined to be of national significance.

   o Headquarters also reviews the semi-annual lists required to be submitted by Regions listing non-offshore oil and gas general permits issued in the previous six months or to be issued in the upcoming six months.

STATE PROGRAM APPROVAL PROCEDURES

A. General

   o Currently 13 States approved to issue general permits

   o Approval process is straightforward:

   - The approved NPDES State prepares any necessary modification(s) of State program and then submits the proposed general permit program submission to EPA's Regional Office.
   - EPA's Regional Office and Headquarters review the program submission and determine whether the program modification is "substantial." If the modification is determined to be substantial, public notice and comment of the proposed revision is required.
   - The Regional Administrator approves the general permit program submission; Headquarters reviews final submission for concurrence.

B. State program submissions for General Permits program authority must include (see attached models):

   o A complete copy of applicable State statutory and regulatory authorities (including any revisions to the State legal authorities necessary to issue general permits).

   o A General Permit Program Description

   o Any necessary revisions to the NPDES Memorandum of Agreement

   o An Attorney General's Statement (or amendment) certifying that State law provides adequate legal authority to administer and enforce the general permit program along with specific citations.

C. State law

   1. Statutory Authority

      o A State's authority to issue general permits may arise from its general statutory authority.

o The primary consideration is whether State law is limited to individual permits or can be interpreted more broadly.

o The Attorney General must assure EPA that the State's permitting authority does not require individual permits for all sources and that general permits issuance procedures are consistent with State law.

2. Regulatory Authority

o State regulations must be at least as stringent as federal NPDES regulations (see listing of applicable federal regulations in Guidance Appendix G) which:

- may only regulate storm water sources or sources which meet §122.28(a)(2) requirements,
- provide procedures for administration of general permit program,
- delineate the criteria used to determine which dischargers will qualify for general permit coverage,
- recommend that regulations require NOI from discharger to be covered by a general permit,
- provide an "opt out" mechanism for dischargers desiring an individual permit instead of general permit coverage,
- provide authority for the Director to require a discharger covered by a general permit to obtain an individual permit (and opportunity for interested persons to petition for same), and
- do not automatically terminate individual permits when a general permit is issued (the individual permit must be revoked following appropriate notice and comment procedures at 40 CFR Part 124 prior to general permit coverage).

D. General Permits Program Description (see attached model)

o As with NPDES permit program approval, the document should describe how the general permit program will operate. For example, the Program Description:

- outlines procedures the State intends to use for the application, development, and issuance of general permits, including a discussion of the mechanisms for public notice and comment;
- addresses the State's plans for permit enforcement and compliance monitoring;
- includes a list of the types of general permits the State plans to issue;
- details the procedures by which discharges covered by a general permit may request an individual permit;
- delineates procedures regarding where and how an individual requests coverage under a general permit;
- states which agency/department will administer the program; and
- describes resource allocations and any impact (increase/decrease due to the new program) on the administration of the on-going NPDES program.

E. Memorandum of Agreement (see attached models)

o The MOA, or revision, must briefly sketch the responsibilities of both the EPA and the State, as well as outline the basic aspects of the State program. For example:

- The MOA must discuss the procedure for EPA review and comment or objection on the State's general permits, and
- the signature block for the EPA Administrator is no longer necessary.

ATTACHMENTS

A. Copy of 40 CFR §122.28
B. Program Description and MOA requirements (excerpted from NPDES State Program Guidance)
C. Model General Permit Program Description (Minnesota)
D. Model MOA Amendment (from NPDES State Program Guidance)
E. Model Attorney General's Statement Amendment (Minnesota)
F. Model Federal Register Notice (Minnesota)
G. Copy of February, 1988 General Permit Program Guidance

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

(a) *Coverage.* The Director may issue a general permit in accordance with the following:

(1) *Area.* The general permit shall be written to cover a category of discharges or sludge use or disposal practices or facilities described in the permit under paragraph (a)(2)(ii) of this section, except those covered by individual permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:

(i) Designated planning areas under sections 208 and 303 of CWA;

(ii) Sewer districts or sewer authorities;

(iii) City, county, or State political boundaries;

(iv) State highway systems;

(v) Standard metropolitan statistical areas as defined by the Office of Management and Budget;

(vi) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or

(vii) Any other appropriate division or combination of boundaries.

(2) *Sources.* The general permit may be written to regulate, within the area described in paragraph (a)(1) of this section, either:

(i) Storm water point sources; or

(ii) A category of point sources other than storm water point sources, or a category of "treatment works treating domestic sewage," if the sources or "treatment works treating domestic sewage" all:

(A) Involve the same or substantially similar types of operations;

(B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;

(C) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;

(D) Require the same or similar monitoring; and

(E) In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

(b) *Administration.* (1) *In general.* General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of Part 124 or corresponding State regulations. Special procedures for issuance are found at § 123.44 for States and § 124.58 for EPA.

(2) *Requiring an individual permit.*

(i) The Director may require any person authorized by a general permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take action under this paragraph. Cases where an individual NPDES permit may be required include the following:

(A) The discharger is not in compliance with the conditions of the general NPDES permit;

(B) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

(C) Effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit;

(D) A Water Quality Management plan containing requirements applicable to such point sources is approved; or

(E) The requirements of paragraph (a) of this section are not met.

(ii) *For EPA issued general permits only,* the Regional Administrator may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in paragraph (b)(2)(i) of this section, only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES permit the general permit as it applies to the individual permittee shall automatically terminate. The Director may grant additional time upon request of the applicant.

(iii) Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under § 122.21, with reasons supporting the request, to the Director no later than 90 days after the publication by EPA of the general permit in the FEDERAL REGISTER or the publication by a State in accordance with applicable State law. The request shall be processed under Part 124 or applicable State procedures. The request shall be granted by issuing of any individual permit if the reasons cited by the owner or operator are adequate to support the request.

(iv) When an individual NPDES permit is issued to an owner or operator otherwise subject to a general NPDES permit, the applicability of the general permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit.

(v) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

(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) of this section 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).

(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.*))

[48 FR 14153, Apr. 1, 1983, as amended at 48 FR 39619, Sept. 1, 1983; 49 FR 38048, Sept. 26, 1984; 50 FR 6940, Feb. 19, 1985; 54 FR 258, Jan. 4, 1989; 54 FR 18782, May 2, 1989]

EDITORIAL NOTE: At 54 FR 258, Jan. 4, 1989, § 122.28 was amended by removing paragraph (b)(2)(i)(A) and redesignating the existing paragraphs (B), (C), (D), (E) and (F) as (A), (B), (C), (D) and (E) respectively. At 54 FR 18782, May 2, 1989, § 122.28 was again amended, in part by revising paragraphs (b)(2)(i)(B), (C), and (F). As it is not clear how the second amendment was intended to be handled, the text of these revised paragraphs follows. EPA will publish clarification at a later date.

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

* * * * *

(b)* * *

(2)* * *

(i)* * *

(B) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general NPDES permit;

(C) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

* * * * *

(F) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general NPDES permit; or

* * * * *

§122.28(b)(2)(i) as revised November 16, 1990:

6. Section 122.28(b)(2)(i) is revised to read as follows:

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

* * * * *

(b) * * *

(2) *Requiring an individual permit.* (i) The Director may require any discharger authorized by a general permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take action under this paragraph. Cases where an individual NPDES permit may be required include the following:

(A) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general NPDES permit;

(B) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

(C) Effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit;

(D) A Water Quality Management plan containing requirements applicable to such point sources is approved;

(E) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(F) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general NPDES permit; or

(G) The discharge(s) is a significant contributor of pollutants. In making this determination, the Director may consider the following factors:

(*1*) The location of the discharge with respect to waters of the United States;

(*2*) The size of the discharge;

(*3*) The quantity and nature of the pollutants discharged to waters of the United States; and

(*4*) Other relevant factors;

* * * * *

(4) General Permit Authority*

Unlike pretreatment and federal facilities authority, general permit authority is an optional program and need not be contained in a NPDES submission. If States choose to issue such permits, however, EPA requires a program description and MOA modification to be included in all submissions requesting general permit authority.

(a) Program Description

The State must generally describe how it intends to administer its general permit program, including under what circumstances general permits are to be issued. To enable reviewers to determine whether a State's program is consistent with the CWA, it is important for the State to clearly set out its general permit strategy. This includes specifying the classes of dischargers the State intends to permit (a list of general permits the State plans to develop will be invaluable to EPA personnel reviewing the program application), along with any restrictions on general permit coverage (such as discharger size or industry category) the State is imposing on itself.

The State must detail the procedures it will utilize to ascertain which dischargers are covered under a given general permit, as well as providing the approximate number of dischargers it intends to include under each permit, if known. Procedures for notifying dischargers of their eligibility for coverage under a general permit should also be indicated.

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* This material is excerpted from the "NPDES State Program Guidance," July 29, 1986 (available from Office of Water Enforcement and Permits, Permits Division (EN-336)).

Furthermore, the document must discuss the public participation procedures for general permit issuance (these are required by 40 C.F.R. Part 124). For example, the State must indicate whether it will provide public notice when a discharger, already regulated under an individual NPDES permit, requests coverage under a general permit and seeks to have its individual permit revoked.

The general permit program description should indicate staffing or resource implications of program approval. For example, general permits may free up some NPDES staffing and resources which may be redirected toward other areas of the program.

(b) Memorandum of Agreement

The MOA must detail the interrelationship between EPA and the State. Specifically, the document must address EPA review and comment/objection procedures for State general permits since they are different from EPA review of individual NPDES permits.*

In the case of an NPDES State seeking to modify its program by adding general permit authority, the existing MOA must be revised if it contains language limiting its applicability to individual permits, or lacks a discussion on EPA review and comment/objection of State general permits.

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* General permits must be reviewed by the Director of the Office of Water Enforcement and Permits (OWEP), EPA Headquarters, before they may be issued by the State agency (see, 40 CFR 123.43(b), 123.44(a)(2), and 123.45(i)). Note, OWEP has waived Headquarters review of certain general permits (see, "General Permit Program Guidance," February, 1988, at page 29).

ATTACHMENT C

PROGRAM DESCRIPTION
MINNESOTA POLLUTION CONTROL AGENCY
GENERAL PERMIT PROGRAM

A. Introduction:

This program description is submitted in accordance with 40 CFR 123.21 and 123.22, in order to obtain approval by the U.S. Environmental Protection Agency (EPA) of the Minnesota Pollution Control Agency's (MPCA) administration of the General Permit Program. This program description supplements the description contained in the original application for delegation of the NPDES Program, dated April 5, 1974. The General Permit Program will be a subpart of the NPDES Program, currently administered by the MPCA.

The MPCA was delegated the NPDES Program on June 30, 1974. Minnesota received authority to administer the NPDES Program for federal facilities on December 9, 1978, and subsequently received authority to administer the pretreatment program on July 16, 1979.

The General Permit Program will be designed to provide NPDES permit coverage for low priority dischargers which would not otherwise receive an effective NPDES permit in the foreseeable future. The General Permit Program will improve the administrative efficiency of the Agency's permitting program and allow staff resources to be concentrated on NPDES permits which may have more significant potential for impacting water quality in the State of Minnesota. General permits will be issued for several classes of dischargers where individual permits for such a class

would be substantially similar. Dischargers intended to be covered will include non-contact cooling water dischargers of 1 million gallons per day or less and heat pump dischargers of 100,000 gallons per day or less. It is estimated that there are approximately 100 non-contact cooling water and 200 heat pump dischargers. Additional types of dischargers which may be covered by general permits in the future include storm water discharges and backwash water discharges from potable water treatment plants.

B. Administration:

The General Permit Program will be administered for permit issuance and compliance and enforcement activities by the MPCA, Division of Water Quality, Regulatory Compliance Section. A current organizational chart is attached.

C. Legal Basis:

The statement of the Minnesota Attorney General is attached confirming that the MPCA has adequate authority to operate the General Permit Program.

D. Special Procedures and Requirements for the Issuance and Enforcement of General Permits:

1. Applications

Applications for a general permit will be required from dischargers. The application form will be MPCA Short Form C (previously submitted). The submission of the application will be required before a discharger

will be considered to be covered by the general permit. Restrictions on the coverage of the general permit will be contained in the general permit (see drafts of the general permit previously submitted).

2. General Permit Development

General permits will be developed and issued in essentially the same manner as individual permits, however the public notice will require further distribution (see below). General permits will be developed using Minnesota Water Quality Standards and any applicable USEPA effluent guidelines. General permits will be issued for a term no longer than five (5) years and will not be continued beyond their expiration dates. In accordance with the MPCA/EPA Memorandum of Agreement, general permits will be sent to EPA for review prior to issuance and will not be issued over the specific written objection of the EPA.

3. Public Notice

All general permits will be accompanied by a Fact Sheet outlining the derivation of the permit limits. General permits will be public noticed in accordance with USEPA regulations and Minnesota Rule 7001.0210. The public notice will be published in the Minnesota State Register.

4. Compliance/Enforcement

All dischargers will be required to submit a Discharge Monitoring Report (DMR) in accordance with the schedule contained in the general permit, depending on the volume of the discharge. DMRs will be periodically reviewed for permit compliance and data will be entered into the permit compliance system. All dischargers will be inspected at least once during the effective dates of the permit, if staff resources allow and/or if there is an indication of a non-compliance or non-compliance on the part of the permittee. Enforcement actions will be taken as appropriate for the discharge and in accordance with the Agency's current enforcement strategy.

5. If a particular discharger is designated for coverage under a general permit and requests the issuance of an individual permit, the application will be processed as an application for an individual permit in accordance with Minnesota Rules 7001.0210, Subpart 6. If a discharger who is currently covered under a general permit requests the issuance of an individual permit, coverage under the general permit will be considered terminated when the individual permit is issued. If an individual discharger is regulated by an individual permit and applies for coverage under a general permit, the discharger will be considered to be covered under the general permit when the individual permit is terminated or expires. Aggrieved parties, including permittees, may seek review of a general permit's requirements by filing a complaint in the proper state court.

E. Manpower and Resources:

Priority for issuing general permits will be established through the Annual Water Quality Program Plan. General permits will be developed on an as needed basis, using the present staffing. It is anticipated that the General Permit Program will require approximately 200 person hours per year in technical and administrative support and will cost approximately $3,000 dollars. It is not anticipated that the General Permit Program will result in a significant reduction in cost since currently permits considered eligible for general permits are being allowed to expire, or applications for new permits for dischargers such as small non-contact cooling water discharges are not currently being processed. The MPCA believes that it has adequate funding under current state and federal funding levels to issue and administer the General Permit Program. Funding sources include, but are not limited to, current Federal 106 grants, and a Application Fee of $50.00 for all NPDES applications.

AMENDMENT TO THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM MEMORANDUM OF AGREEMENT BETWEEN (State Agency) AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION ____

The Memorandum of Agreement between the United States Environmental Protection Agency, Region ____ (hereinafter EPA) and the (State Agency) (hereinafter ____) is hereby amended to include (State Agency) and EPA responsibilities for the development, issuance and enforcement of National Pollutant Discharge Elimination System (hereinafter NPDES) general permits as follows:

The (State Agency) has the responsibility for developing and issuing NPDES general permits. After identifying dischargers appropriately regulated by a general permit, the (State Agency) will collect sufficient effluent data to develop effluent limitations and prepare the draft general permit.

Each draft general permit will be accompanied by a fact sheet setting forth the principal facts and methodologies considered during permit development and will be transmitted to the following EPA offices:

Water Management Division Director
U.S. EPA, Region ____
(Address)

Director, Office Water Enforcement and Permits*
U.S. EPA (EN-335)
401 M Street SW
Washington D.C. 20460

EPA will have up to ninety (90) days to review draft general permits and provide comments, recommendations and objections to the (State Agency). In the event EPA does object to a general permit it will provide, in writing, the reasons for its objection and the actions necessary to eliminate the objection. The State has the right to a public hearing on the objection in accordance with 40 CFR 123.44 and Part III of the MOA. Upon receipt of EPA's objection, the State may

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* General permits for discharges from separate storm sewers need not be sent to EPA Headquarters for review.

request a public hearing. If EPA's concerns are not satisfied and the State has not sought a hearing within 90 days of the objection, exclusive authority to issue the general permit passes to EPA.

If EPA raises no objections to a general permit it will be publicly noticed in accordance with (insert State requirements) and 40 CFR 124.10, including publication in a daily or weekly newspaper circulated in the area to be covered by the permit. The (State Agency) will issue and administer NPDES general permits in accordance with (insert citations to State regulations) and 40 CFR 122.28.

The (State Agency) also has the primary responsibility for conducting compliance monitoring activities and enforcing conditions and requirements of general permits.

All specific State commitments regarding the issuance and enforcement of general permits will be determined through the annual 106 workplan/SEA process.

This Amendment to the Memorandum of Agreement will be effective upon approval of the (State Agency's) general permits program application by the Regional Administrator of EPA Region __.

FOR (State Agency):

_____ _____

Director (Date)

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

_____ _____

Regional Administrator (Date)
U.S. EPA, Region _____

ATTACHMENT E

ATTORNEY GENERAL'S STATEMENT REGARDING STATE AUTHORITY TO ISSUE GENERAL PERMITS

I hereby certify, pursuant to my authority as Attorney General of the State of Minnesota, that in my opinion the laws of the State of Minnesota provide adequate authority for the State, through its Minnesota Pollution Control Agency (MPCA), to carry out the general permit program set forth in the "Program Description for General Permit Program" submitted by the MPCA as part of its application to the United States Environmental Protection Agency for approval to administer the General Permit Program. The authority of the MPCA is found in the following statutes and rules of the State, which are in full force and effect on the date of this statement.

1. Permit Authority

Minn. Stat. § 115.03, subd. 1(e)(1984) authorizes the MPCA to adopt, issue, reissue, modify, deny, revoke, and enforce reasonable permits, under such conditions as the Agency may prescribe, for the prevention of water pollution and for the operation of disposal systems and other facilities.

The MPCA also has the authority to adopt rules to implement its other authorities. See Minn. Stat. § 115.03, subd. 1(g) (1984). The MPCA has adopted rules relating to the issuance of permits. Minn. Rules Parts 7001.0010-7001.1350. One of those rules, Part 7001.0210, relates specifically to General Permits.

2. General Permit Requirements

a. Dischargers Eligible.

Minn. Rules Part 7001.0210, subpart 2 provides that "if the agency finds that it is appropriate to issue a single permit," the MPCA may issue a general permit "to a category of permittees whose operations, emissions, activities, discharges, or facilities are the same or substantially similar." Minn. Rules Part 7001.0210, subpart 3 goes on to provide that general permits are appropriate when several permit applicants have the same or substantially similar operations, discharges, operating requirements, emission limitations, and monitoring requirements, and discharge the same types of waste.

Minn. Rules Part 7001.0210, subpart 6 goes on to provide that if the MPCA finds that a permit applicant's facility is more appropriately controlled by an individual permit, the MPCA may choose to issue an individual permit, rather than a general permit, to that applicant. If the MPCA determines that it is appropriate to issue general permits only to those categories of applicants who would also qualify for a general permit under the EPA regulations, I am of the view that it is within the MPCA's discretion under the rule to limit general permits to those categories of applicants.

b. Geographic Area.

Minn. Rules Part 7001.0210, subpart 5 provides that permittees covered by a general permit must be located within a

specific geographic area identified in the permit. In my view this state rule is consistent with 40 C.F.R. § 122.28(a)(1) (1985).

c. Individual Permits.

Minn. Rules Part 7001.0210, subpart 6 provides for the issuance of an individual permit to an applicant who could be covered by a general permit but who requests an individual permit or who is determined by the MPCA to be more appropriately regulated by an individual permit. I find this state provision to be consistent with the federal provisions for individual permits under 40 C.F.R. § 122.28(b)(2) (1985).

A person who already has an individual permit may request the MPCA to terminate the individual permit and include that person in the category of applicants included in the general permit. Minn. Rules Part 7001.0040, subpart 2 and Part 7001.0170. I find these procedures to be consistent with the procedures under 40 C.F.R. § 122.28(b)(2)(v) (1985) whereby a person with an individual permit may request to be included in an EPA-issued general permit.

d. Permit Procedure.

(1) Application

MPCA rules require that any person who seeks a NPDES permit from the MPCA must first submit a completed permit application. Minn. Rules Parts 7001.0050 and 7001.0090. Any person who requests to be included in a general permit will have to submit a completed permit application to the MPCA.

(2) Notice

The MPCA's rules require the Agency to publish notice of a proposed general permit in the State Register. Minn. Rules Part 7001.0210, subpart 4. This publication requirement is what the MPCA must do at a minimum, but the Agency can give more notice. There is nothing in Minnesota law that precludes the MPCA from giving more notice than is specified in the rule, and the MPCA can surely provide public notice of a general permit by publication in a newspaper if the Agency choses to do so.

(3) Public Comments

When a general permit is out on public notice, any person may submit written comments about the proposed permit. Minn. Rules Part 7001.0110. Any person may request that the MPCA modify the proposed permit in any way the person desires. Minn. Rules Part 7001.0110, subpart 2. See also Minn. Rules Part 7000.0500, subpart 6, which allows a citizen to request that a concern be brought to the attention of the full MPCA Board. This could include a request that a certain person proposed to be included in a general permit be issued an individual permit instead. The public may also ask for a public informational meeting or a contested case hearing to resolve their concerns about the proposed permit. Minn. Rules Part 7001.0110, subpart 3 and Parts 7001.0120 and 7001.0130.

(4) Comments by Permit Applicant

The permit applicant may also submit comments about a proposed permit. Any person who is proposed to be included in a

general permit may submit comments about the proposed permit. These comments may relate to changes in the permit language or to removal of that person from the general permit. The applicant may also seek a public meeting or contested case.

3. Judicial Review

Any person, including a permittee, may seek judicial review of a final decision of the MPCA. Any person aggrieved by a decision of the MPCA regarding a permit may seek judicial review. Minn. Stat. §§ 14.63 and 115.05, subd. 11 (1984). See also In Re Authorization to Discharge and Construct Wastewater Treatment Facilities, 366 N.W.2d 118 (Minn. App. 1985).

4. Permit Modification and Revocation

General permits may be modified or revoked. Minn. Rules Parts 7001.0170-7001.0190.

5. Enforcement of General Permits.

General Permits can be enforced just like any other permits. Civil penalties may be imposed for permit violations. Minn. Stat. § 115.071, subd. 3 (1984). Permit violations may be enjoined. Minn. Stat. § 115.071, subd. 4 (1984).

Seal of Office

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota

Dated: September 5, 1986

REVISION OF MINNESOTA NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PROGRAM TO ISSUE GENERAL PERMITS.

[ ]

AGENCY: Environmental Protection Agency.

ACTION: Notice of Approval of the National Pollutant Discharge Elimination System General Permits Program of the State of Minnesota.

SUMMARY: On , the Regional Administrator for the Environmental Protection Agency (EPA), Region V approved the State of Minnesota's National Pollutant Discharge Elimination System General Permits Program. This action authorizes the State of Minnesota to issue general permits in lieu of individual NPDES permits.

FOR FURTHER INFORMATION CONTACT: Almo Manzardo, Chief, Permits Section, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, 312/353-2105.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of wastewater which result from substantially similar operations, are of the same type wastes, require the same effluent limitations or operating conditions, require similar monitoring, and are more appropriately controlled under a general permit rather than by individual permits.

Minnesota was authorized to administer the NPDES program in June, 1974. Their program, as previously approved, did not include provisions for the issuance of general permits. There are several categories which could appropriately be regulated by general permits. For these reasons the Minnesota Pollution Control Agency (MPCA) requested a revision of their NPDES program to provide for issuance of general permits. The categories which have been proposed for coverage under the general permits program include: non-contact cooling water, heat pump discharges, storm water discharges and backwash water discharges from potable water treatment plants.

Each general permit will be subject to EPA review and approval as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

II. Discussion

The State of Minnesota submitted in support of its request, copies of the relevant statutes and regulations. The State has also submitted a statement by the Attorney General certifying, with appropriate citations to the statutes and regulations, that the State has adequate legal authority to administer the general permits program as required by 40 CFR 123.23(c). In addition, the State submitted a program description supplementing the original application for the NPDES program authority to administer the general permits program, including the authority to perform each of the activities set forth in 40 CFR 123.44. Based upon Minnesota's program description and upon its experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary procedures and resources to administer the general permits program.

Washington	11/14/73	--	09/30/86
*West Virginia	05/10/82	05/10/82	05/10/82
*Wisconsin	02/04/74	11/26/79	12/24/80
Wyoming	01/30/75	05/18/81	--

* denotes Approved State General Permit Program
** Contact EPA Headquarters Office, Washington, DC for a current list.

IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to Section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to Section 605(d) of the Regulatory Flexibility Act (5 U.S.C. §601 et seq.), I certify that this State General Permits Program will not have a significant impact on a substantial number small entities. Approval of the Minnesota NPDES State General Permits Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the Minnesota NPDES State General Permits Program merely provides a simplified administrative process.

Date

Frank M. Covington

for Valdas V. Adamkus
Regional Administrator

III. Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA will provide Federal Register notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's Federal Register notice is to announce the approval of Minnesota's authority to issue general permits.

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program
Alabama	10/19/79	10/19/79	10/19/79
Arkansas	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	--
Colorado	03/27/75	--	--
Connecticut	09/26/73	--	06/03/81
Delaware	04/01/74	--	--
Georgia	06/28/74	12/08/80	03/12/81
Hawaii	11/28/74	06/01/79	08/12/83
Illinois	10/23/77	09/20/79	--
Indiana	01/01/75	12/09/78	--
Iowa	08/10/78	08/10/78	06/03/81
Kansas	06/28/74	08/28/85	--
Kentucky	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	--	09/30/85
Michigan	10/17/73	12/09/78	06/07/83
Minnesota	06/30/74	12/09/78	07/16/79
Mississippi	05/01/74	01/28/83	05/13/82
Missouri	10/30/74	06/26/79	06/03/81
Montana	06/10/74	06/23/81	--
Nebraska	06/12/74	11/02/79	09/07/84
Nevada	09/19/75	08/31/78	--
New Jersey	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	--
North Carolina	10/19/75	09/28/84	06/14/82
North Dakota	06/13/75	--	--
Ohio	03/11/74	01/28/83	07/27/83
Oregon	09/26/73	03/02/79	03/12/81
Pennsylvania	06/30/78	06/30/78	--
Rhode Island	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82
Tennessee	12/28/77	04/30/86	08/10/83
Vermont	03/11/74	--	03/16/82
Virgin Islands	06/30/76	--	--
Virginia	03/31/75	02/09/82	--

U.S. Environmental Protection Agency
Washington, D.C. 20460

GENERAL PERMIT PROGRAM GUIDANCE

Office of Water

Office of Water Enforcement and Permits

Permits Division (EN-336)

February 1988

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PREFACE

This guidance document is intended to:

1) demonstrate the benefits of general permits as an administrative mechanism to assist permitting authorities to meet the goals of the Clean Water Act and to regulate numerous discharges in similar, but not necessarily identical, circumstances;
2) assist permitting authorities that currently have general permit authority in the development and issuance of general permits;
3) assist those States currently approved to administer the basic NPDES permit program to obtain general permit authority; and
4) identify general permits that have been developed by both EPA Regions and approved States.

Organization

This guidance discusses the background and history of the general permit program (Chapter 1), reviews the evolution of the general permit program in terms of its legal framework (Chapter 2), explains the process for developing and issuing a general permit (Chapter 3), examines EPA's and the States' experience in the development and issuance of general permits (Chapter 4), and

details the process for assumption by a State of general permit authority (Chapter 5).

Appendices

This guidance also provides several appendices that should prove useful as reference materials. Appendix A details federal Register publication requirements for EPA-issued draft and final NPDES general permits. Appendix B furnishes EPA Headquarters' procedures for the review of draft and final general permits. Appendix C discusses the continuation of EPA-issued general permits. Appendix D lists all the existing general permits that EPA Headquarters has on file for use as model general permits. Appendices E and F provide copies of a supplemental Attorney General's Statement and a modified Memorandum of Agreement as examples of how a State NPDES program may be modified to obtain general permit authority. Appendix G contains the federal NPDES general permit cites. Appendix H lists the Standard Industrial Codes used for general permits.

CHAPTER 1

BACKGROUND

NPDES Permit Program

The National Pollutant Discharge Elimination System (NPDES) permit program, established by Congress in 1972, is administered primarily by States, after their authority and ability to manage the NPDES permit program has been reviewed and approved by EPA, pursuant to Section 402 of the Clean Water Act. In addition to the basic NPDES permit program, States are also required to assume responsibility for the regulation of discharges from Federal facilities and the establishment of pretreatment programs. To date, 39 States and Territories (out of a possible 56) have received authorization to administer the basic NPDES permit program. Of those 39, 30 have been approved to regulate Federal facilities and 25 have approved State pretreatment programs.

In 1979, EPA promulgated revisions to the NPDES permit program regulations. These revisions were mainly in response to the 1977 Clean Water Act amendments, but also created a class of permits called general permits. Under the general permit program, one permit may be issued to cover a class or category of similar dischargers in a defined geographic area with similar effluent limitations.

As with pretreatment and Federal facilities (required NPDES permit program elements), a State seeking general permit

authority must either request modification of its approved NPDES permit program or include its request for general permit authority as a part of a concurrent request for NPDES authority. However, unlike pretreatment and Federal facilities authority, there is no requirement that an NPDES State seek general permit authority; it is an optional program element.

General permit authority enables the State to issue one permit covering a similar class or category of dischargers within specified geographic boundaries. A general permit applies the same or similar effluent limitations and control measures to all dischargers covered under the general permit. To date, 13 States (Arkansas, Colorado, Illinois, Kentucky, Minnesota, Missouri, Montana, New Jersey, Oregon, Rhode Island, Utah, West Virginia, and Wisconsin) have NPDES general permit authority approved by EPA.

Uses of General Permits

There are many varied reasons why permitting authorities choose to use general permits to cover point source discharges. Permitting authorities approved to issue general permits have used general permits to reduce their permit issuance backlogs. General permits can be written to cover large classes or categories of similar dischargers, thereby substantially reducing permit issuance backlogs. In addition, general permits can be used to cover dischargers that have been previously unpermitted due to resource constraints. By covering numerous dischargers

under one general permit, the permitting authority can avoid much of the time and burden that issuing individual permits to each discharger would involve. For some classes of discharges, such as storm water point sources, issuing individual permits to each source would overburden the existing NPDES permit program. Permit application costs and paperwork burdens for dischargers covered under the general permit are also reduced. Dischargers covered by a general permit usually are not required to conduct the sampling and analysis associated with individual permit applications.

Early in the history of the general permit program, storm water sewers were identified as ideal candidates for coverage under general permits. The general permit program can serve as a means to handle the vast numbers of storm water point sources needing permits. Since EPA cannot issue general permits covering dischargers in those States with NPDES authority, States that currently do not have general permit authority are strongly encouraged to seek such authority in order to deal with the numbers of storm water permit applications expected in the next few years.

General Permits vs. Individual Permits

A well-fashioned general permit is the equivalent of an individual NPDES permit. A general permit is identical to an individual permit regarding effluent limitations, water quality standards, monitoring and sampling requirements, and enfor-

ceability. The only difference from the permit writer's standpoint is that a general permit covers several point sources. Thus, general permits are fashioned just as individual permits with monitoring and inspection and recordkeeping requirements. The permitting authority must have confidence in the appropriateness of the general permit because of the potential cumulative impact to the environment from the point sources covered by the general permit. Good general permits are no less effective than individual permits; they simply cover more than one discharger.

CHAPTER 2

LEGAL FRAMEWORK

Recognition by the Courts

There is no specific provision in the Clean Water Act explicitly defining or authorizing NPDES general permits. The statutory authority for regulating a group of sources with similar discharges under one permit was first recognized in NRDC v. Train (396 F.Supp. 1393 (D.D.C. 1975)); aff'd., NRDC v. Costle, 568 F.2d 1369 (D.C. Cir. 1977)). That decision required EPA to develop and administer a permit program for all point sources in the feedlot, separate storm sewer, agriculture and silviculture categories. EPA had previously exempted these discharges from the requirement of applying for and obtaining an NPDES permit. The court held that once a discharge is identified as a point source it cannot be excluded from coverage under the NPDES program. The court went on to state that EPA could make use of administrative devices, such as "area permits," in appropriate circumstances to make the program more flexible and administratively manageable. 396 F.Supp. at 1402. Following this decision EPA promulgated regulations to implement this device, calling it the general permit program.

History of the Regulations

EPA first proposed general permit regulations (February 4, 1977, 42 FR 5846) that would have limited the scope of the

general permit program to irrigation return flows (later exempted from the requirements of Section 402 of the Clean Water Act by the 1977 amendments) and separate storm sewers. The final regulations, published on June 7, 1979 (44 FR 32854), and codified at 40 CFR 122.48 (1980), expanded the coverage of the general permit program to include other categories of minor point sources, in addition to separate storm sewers, within a designated "general permit program area" or "gppa". A "gppa" had to correspond to existing geographic or political boundaries such as designated planning areas under Sections 208 and 303 of the Clean Water Act, sewer districts, city, county or State boundaries, State highway systems, standard metropolitan statistical areas, or urbanized areas. Categories of point sources falling within a "gppa" that involved similar operations, discharged the same type of wastes, had similar monitoring requirements and the same effluent limitations (whether promulgated effluent limitations guidelines or those developed by best professional judgements) were eligible for general permit coverage, if, in the opinion of the EPA Regional Administrator or State Director, such coverage was appropriate.

When the NPDES regulations were merged with those for the Resource Conservation and Recovery Act (RCRA), the Underground Injection Control (UIC), and the Prevention of Significant Deterioration (PSD) permit programs in 1980 into the Consolidated Permit Regulations, the general permit provisions were reorganized and rewritten (at 40 CFR 122.59 (1981)) to clarify

questions relating to the program and to make minor changes. First, the designation of a "general permit program area" was abandoned since it served no purpose that could not be satisfied by simply specifying in the permit the geographic or political boundaries covered. Second, while previously the "gppa" could be redefined if necessary to address differing State water quality standards, the new regulations clarified that the general permit could be modified for any of the causes that applied to individual permits (e.g., receipt of information indicating unacceptable cumulative impacts). Other minor changes to the general permit program included: (1) shortening EPA Headquarters review of EPA-issued draft general permits from 90 days to 30 days; (2) clarifying that a discharger's coverage under a general permit automatically terminates on the effective date of an individual permit for that discharger; and (3) removing the requirement of on-site inspections prior to revoking a general permit and requiring the discharger to acquire an individual permit.

The Consolidated Permit Regulations made one important substantive change. The sources other than separate storm sewers for which a general permit could be written would no longer be limited to "minor" sources so long as the general permit covers sources involving similar types of operations, having the same wastes, effluent limitations and operating conditions and similar

monitoring requirements, and which would be more appropriately regulated under a general permit.[1]

Coverage under Existing Regulations

When the Consolidated Permit Regulations were deconsolidated on April 1, 1983, the general permit provisions were recodified at 40 CFR 122.28 without change. Section 122.28(a), which sets forth the appropriate coverage for a general permit, states that a general permit shall correspond to existing geographical or political boundaries, and specifies the types of sources that may be regulated by a general permit. Thus, general permits may be issued to separate storm sewers, or to other sources if such sources satisfy the criteria on similarity and appropriateness. These criteria are discussed in detail in Chapter 3.

Administration of General Permits

Section 122.28(b) addresses the administration of general permits beyond the issuance, modification, revocation, reissuance and termination provisions in Part 124 applicable to all permits. Section 122.28(b) allows the EPA Regional Administrator or State Director to require, on his or her own initiative or in response to a petition by any interested party, any discharger otherwise eligible for coverage under a general permit to obtain an

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[1] In the April 1, 1983 de-consolidation of EPA permit programs, the word "minor" was inadvertently reinserted into 40 CFR 122.28 and subsequently published in the July 1, 1984 publication of 40 CFR Parts 100 to 149. This error was corrected in a February 19, 1985 Federal Register notice, at 50 FR 6940.

individual permit. Some of the reasons for which an individual permit may be required are: failure to comply with the conditions of the general permit; a change in the availability of pollution control technology; promulgation of an applicable effluent guideline; approval of an applicable Water Quality Management Plan; failure to meet the criteria in §122.28(a) regarding sources appropriate for coverage under a general permit; or a determination that the source is a significant contributor of pollutants.

The EPA Regional Administrator may require a discharger covered by an EPA-issued general permit to apply for an individual permit as described above only after providing the owner/operator with a written notice that a permit application is required, which contains a brief statement of the reasons for requiring an individual permit, an NPDES application form, a statement setting the deadline for the filing of the application (the Regional Administrator may grant additional time), and a statement that on the effective date of the individual permit the general permit will cease to apply to the permittee (40 CFR 122.28(b)(2)(ii)).

A discharger excluded from coverage under a general permit solely because it is already covered under an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit applies to the source. Revocation of

an individual permit must follow public notice and comment procedures (40 CFR 122.28(b)(2)(v)).

Other Regulatory Provisions Governing General Permits

If an NPDES State is proposing to issue a general permit, 40 CFR 123.43 requires the State to send a copy of the draft or proposed general permit, except those for separate storm sewers, to both the EPA Regional Office and the Director, Office of Water Enforcement and Permits, EPA Headquarters. 40 CFR 123.44 allows EPA 90 days from receipt of the proposed general permit to comment on, object to or make recommendations regarding the proposed general permit.

If EPA is issuing the general permit, 40 CFR 124.58 sets forth special procedures for internal EPA review. The EPA Regional Administrator is required to send a copy of the draft general permit and the administrative record to the Director, Office of Water Enforcement and Permits, during the comment period. The Office of Water Enforcement and Permits has 30 days or until the end of the public comment period, whichever is later, to comment upon, object to, or make recommendations with respect to the draft general permit. If the Office of Water Enforcement and Permits objects to a draft general permit within the review period, the Regional Administrator cannot issue the final general permit until the Office of Water Enforcement and Permits concurs in writing with the conditions of the general permit. The Office of Water Enforcement and Permits is not

required to provide written concurrence/approval on all draft general permits; failure to object during the 30-day review period can be taken as an approval. Thus, written concurrence is necessary only for those general permits that have been objected to at the draft stage.

Normally a formal evidentiary hearing is available to any person wishing to challenge any EPA-issued NPDES permit. However, since general permits are rulemakings, 40 CFR 124.71 provides that persons affected by an EPA-issued general permit must either challenge the general permit in the U.S. Court of Appeals under sec. 509(b)(1) of the CWA or apply for an individual NPDES permit. It is particularly important that a complete administrative record of the general permit be compiled since appellate court challenges do not allow the introduction of new testimony through the hearing process. In addition, 40 CFR 124.111(a)(3) provides the option to the Regional Administrator to use nonadversary panel procedures to process draft general permits.

CHAPTER 3

PROCESS

Identification of Suitable Class or Category

Normally it is the Region or State that initiates the development of a general permit for a particular class or category of point sources. However, a group of like dischargers may also request that the permitting authority employ a general permit rather than individual permits.

The first step in the development of a general permit is to identify a class or category of dischargers meeting the criteria of §122.28. (As noted in Chapter 2, general permits need no longer be issued to cover only "minor" discharges; although some permitting authorities have made the decision not to use general permits to cover "major" discharges.) The five criteria for general permits contained in §122.28 must be met before a general permit can be developed.

1. Involve the same or substantially similar types of operations

Any category or subcategory of dischargers is eligible for coverage under a general permit provided that all dischargers within the permitted category or subcategory involve similar types of operations. Examples of classes or categories of dischargers that have been covered under general permits are offshore oil and gas exploration, development, and production

facilities; concentrated animal feedlots; non-contact cooling water; hydrostatic testing of petroleum pipelines; and seafood processing. These are just some examples of facilities that can be covered by a general permit; this list is not exhaustive. As mentioned above, coverage of storm water point sources by general permits is also appropriate.

2. Discharge the same types of wastes

Once a class or category of dischargers has been identified as having similar operations, a determination must be made as to the similarity of waste streams. The regulations state that facilities must discharge the "same types of wastes" to be covered under a general permit. EPA has not interpreted this requirement to mean that the waste streams must be identical in composition. Rather, this requirement should be interpreted in conjunction with the next two criteria; the waste streams should be sufficiently similar that the same (or similar) permit conditions are appropriate.

3. Require the same effluent limitations or operating conditions

EPA has not interpreted this requirement to mean that effluent limitations or operating conditions must be identical. Permit writers should be careful when water quality-limited or special use streams are involved. The general permit can be fine-tuned with requirements that ensure that State water quality

standards are not exceeded, or that facilities discharging to water quality-limited or special use streams are excluded from coverage under the general permit. (See page 18 for a further discussion.)

For all types of discharges outside the baseline of the territorial seas, Section 403(c) of the Clean Water Act mandates that Ocean Discharge Criteria Evaluations (ODCEs) be performed. The ODCE provides an additional basis for limitations and monitoring requirements in these general permit. Just as a general permit must incorporate those special limits detailed in an ODCE, so also must Areas of Biological Concern (ABCs) identified by the Regional Administrator in accordance with the criteria set forth in 40 CFR 125.122(a)(1) through (10) be addressed in the general permit for oil and gas facilities in areas in and beyond the territorial seas. In either case, these special limitations need not affect the entire geographical area to be covered by the general permit and do not preclude issuing a general permit to a large class or category of facilities, but the general permit would have to incorporate conditions such that facilities either operating in ABCs or affected by the findings of the ODCE would comply with any special limitations.

4. Require the same or similar monitoring

Again, the benchmark is that similar, not identical, monitoring requirements would be required of all the facilities to be covered under the general permit. For instance, the

general permit could be structured to require different monitoring procedures for different sized facilities within the same class or category of dischargers. In one case facilities with a certain volume of effluent might be required to monitor more frequently than small facilities (e.g., the permit could require weekly monitoring for large facilities and monthly monitoring for smaller facilities). In other cases, the general permit might require different monitoring methods (e.g., continuous monitoring vs. grab samples). As mentioned above, the general permit must also accommodate special conditions required by ODCEs or for ABCs. It is possible to tailor the general permit with specific conditions so that a facility that does not have a certain waste stream would not need to monitor and report for that waste stream. For example, a general permit covering petroleum storage and transfer facilities might include requirements for discharges from truck washing and tank loading area runoff. However, if a facility does not have these discharges, it could still be covered by the general permit, but the specific requirements for truck washing and tank loading would not apply. The facility would only comply with those control and monitoring requirements of the general permit that are applicable.

Another example might be a general permit covering both dewatering activities and hydrostatic testing of pipelines, both of which can occur during pipeline construction. If a facility has both operations, all the monitoring requirements of the general permit would apply. If a facility only has one of the

two operations, then only those monitoring requirements specific to that type of operation would apply.

The decision as to which monitoring requirements apply can be made in several ways. The best approach is to fashion the information required in the Notice of Intent (NOI) to allow the permitting authority to make the decision as to which control and monitoring requirements are applicable for that particular discharger. Or the NOI might be fashioned to require that the potential permittee identify those proposed monitoring requirements that apply to the facility, subject to the approval of the permitting authority. Another approach might be to structure the general permit in such a way as to allow the permittee to make the decision, based on the terms of the permit, as to which monitoring requirements are applicable; however, this approach is not recommended.

5. Discharges are more appropriately controlled under a general permit

The permitting authority must determine the suitability of coverage under the general permit by examining the significance of the discharges, pollutant levels, cumulative impacts on the receiving water(s), etc. The EPA Regional Administrator or a NPDES State Director must then state that, in his or her opinion, the discharges are more appropriately controlled under a general permit rather than an individual permit. This statement must appear in the fact sheet accompanying the permit and an oppor-

tunity for public comment on the suitability of covering such dischargers under a general permit must be provided.

Permit Development

Once the five criteria discussed above are met, the actual development of the general permit can proceed just as for any individual permit. The permit writer should first apply any appropriate effluent limitations guideline(s). In the absence of an effluent limitations guideline, the permit writer must use his/her best professional judgement (BPJ) in establishing permit limits and conditions. The NPDES regulations, at 40 CFR 125.3, require that permits developed on a BPJ basis must consider the appropriate technology for the category of point sources, based upon all available information, and any unique factors relating to the class or category of sources. In setting BPJ limitations, the permit writer must consider several specific factors. These factors are also those required to be considered in the development of effluent limitations guidelines, and therefore, are often referred to as the "304(b)" factors (see, 40 CFR 125.3). References (data sources, tools, etc.) for BPJ determinations are numerous and voluminous. Examples of BPJ tools available to the permit writer are abstracts of industrial NPDES permits, treatability manuals, guidance documents, toxicity reduction evaluations for selected industries, industry experts within EPA, and effluent guidelines information (including Section 308

questionnaires, screening and verification data, development documents, etc.), as well as technical journals and books.

Relationship to State Water Quality Standards

The permit writer must also address whether the appropriate effluent limitations guideline or BPJ determination will ensure that State water quality standards are met. EPA has published methods for establishing effluent limitations for all point source discharges based on State water quality standards (e.g., wasteload allocations). Any NPDES permit must ensure that State water quality standards are met at the edge of any applicable mixing zone. This is more difficult for a general permit because of the multiple receiving water bodies involved within the geographic area of the general permit. A general permit can be subdivided, or several general permits can be issued, where there is a need to meet varying State water quality standards. In addition, individual permits can be required of dischargers with existing water quality-based limitations, dischargers that have caused exceedences of State water quality standards in the past, or dischargers into receiving waters known or suspected of failing to meet their designated use(s) due to point source impacts.

State water quality standards are comprised of use classifications and narrative and/or numerical criteria established to protect the use. To be fully protective of aquatic life and environmental quality, States should develop

both numerical and narrative water quality criteria. Where narrative criteria are adopted, the State indicates how it will implement the criteria, e.g., through periodic field sampling of the habitat or bioassays of the effluent (acute and chronic toxicity testing), during the State water quality standards approval process.

In some instances, EPA recommended criteria may be used to help interpret a State narrative standard. For example, a State may specify as a narrative standard that all waters shall not be toxic to aquatic life or human health. In the absence of any State numerical criteria for toxic chemicals, the EPA recommended criteria may be used to define expected levels of toxicity. This approach is recommended in the implementation of the requirements of sec. 304(1) of the CWA, as amended by the Water Quality Act of 1987, for those States that have not yet revised their water quality standards in accordance with sec. 303(c)(2) of the CWA. Such States are still required under sec. 304(1) to list impaired waters and develop individual control strategies.

There are several ways in which the permit writer can ensure that State water quality standards are met. A narrative statement requiring compliance with State water quality standards can be part of the general permit. In addition, an NOI requesting information about the receiving water body can be used to determine if general permit coverage is appropriate and if State water quality standards will be met by the particular discharger. Another approach would be to use statewide numerical limits as

the applicable limits for a particular water body or group of receiving waters (e.g., all State waters classified with a particular use designation). Other methods, such as best management practices (BMPs), are also available.

Special Considerations

Any special conditions mandated by an ODCE or ABC requirements should be included in the general permit. As discussed above, the permit writer has the latitude to fashion the general permit to cover varying operations, wastes, effluent limitations and operating conditions, and monitoring requirements.

Issuance and Promulgation of General Permits

Once a tentative decision has been made to issue a general permit, the permit writer develops a draft general permit incorporating the necessary terms and conditions. When the draft general permit and accompanying fact sheet have been prepared, public notice must be given in publications of general circulation (e.g., statewide newspapers, or in the case of EPA-issued general permits, in the Federal Register). The draft general permit itself need not be published, only notice of its availability; however, EPA practice has been to publish the fact sheet for draft general permits and to publish the fact sheet, response to comments received on the draft general permit, and general permit upon the issuance of the final general permit.

On November 3, 1983, the Office of Management and Budget waived review of EPA-issued general permits. This has greatly reduced the review time for EPA-issued general permits. Appendix A contains a memorandum of January 16, 1984, providing boilerplate language that should be included in all draft and final EPA-issued general permits. EPA Regional Offices should adhere closely to these requirements in preparing draft and final general permits to avoid delays in publication in the Federal Register.

Since general permits are considered to be rulemakings, EPA's issuance and promulgation activities must be conducted in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 551, et seq.). NPDES States are, of course, bound by the strictures of their statutes governing State rulemaking, licensing, and adjudicatory proceedings. In some States, for instance, this has meant that in addition to providing public notice of a draft general permit in a statewide newspaper, the draft general permit must also be published in a State Administrative Register or Bulletin.

The permitting authority must ensure that there is adequate public notice of the availability of the draft general permit and all supporting materials (e.g., the fact sheet) in the administrative record, including all ODCE and ABC supporting materials. The fact sheet must either be published or made available for review by the public. In addition, the permit

writer must ensure that there is opportunity for effective public comment, including a public hearing, if appropriate.

After the close of the comment period on the draft general permit, all comments received must be evaluated and, where significant, must be responded to, with any necessary changes made to the general permit. Because the fact sheet represents the original intent in developing the general permit, EPA recommends that no changes to the original fact sheet be made. Any necessary changes to the permit in order to respond to comments received can be discussed in an addendum to the fact sheet (commonly called Response to Comments). Any such Response to Comments should include a citation to that part of the final general permit changed in response to the comment (see, 40 CFR 25.8). Any comments on the draft general permit deemed to be of an insignificant nature can be responded to in a letter to the commenter without reference in the final permit, although this is not required under 40 CFR 124.17. It is also imperative that permit writers maintain complete files on all comments received during the public comment period in order to respond to any challenge to the general permit.

At the time of the final promulgation of the general permit, the effective date and expiration date of the general permit must be explicitly stated. Some permitting authorities have suggested that the draft general permit incorporate a date by which the general permit would automatically become effective if no changes are made to the proposed general permit; this approach is

incorrect since the final general permit may need to be adjusted to respond to comments furnished during the public comment period and such revisions may take longer than the proposed automatic effective date. In addition, Section 553(d) of the APA requires publication of a substantive rule not less than 30 days before its effective date. The purpose of this requirement is to allow permittees sufficient lead time to prepare to comply with new regulatory requirements. 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. In the case of a general permit, such "relief" might be the issuance of an NPDES permit to previously unpermitted point source discharges or that the submission of individual permit applications will be unnecessary. The final permit should be published in the same manner as the original draft permit and must be signed by the EPA Regional Administrator, State Director, or their designees. Although 40 CFR 124.17 provides that only the final general permit and any Response to Comments need be published, a preamble discussion of the circumstances surrounding the issuance of the final general permit is very beneficial.

Notice of Intent to be Covered Under a General Permit

The general permit regulations do not specifically address the issue of how a potential permittee is to apply to be covered under a general permit. EPA and States have generally incor-

porated permit conditions that either require potential permittees to notify the permit authority that they intend to comply with the general permit or that they do not wish to be covered by the general permit and wish an individual permit. Another approach would be to cover all dischargers engaged in an activity regulated by the general permit automatically unless a discharger specifically wishes not to be covered and requests an individual permit. In the latter case, there is no clear accounting for the number of permittees covered by the general permit nor an identification of those permittees, which has a bearing on enforcement and compliance activities. EPA-issued general permits have generally required that those permittees wishing to be covered must notify the permitting authority within a specified time to be eligible for coverage. This notification requirement is commonly called a Notice of Intent (NOI).

EPA recommends the use of NOIs for a variety of reasons. The use of the NOI allows the permitting authority to know the number of permittees covered and their identity and location. If the general permit does not provide for automatic coverage, the permitting authority can use the NOI as a screening mechanism to determine the appropriateness of coverage under the general permit (e.g., if the discharge is located on a water quality-limited stream segment). In addition, the permitting authority can use the NOI to determine appropriate monitoring conditions if the general permit has varying monitoring requirements. The NOI requirement can provide certainty to permittees that they are

covered by the general permit and can also provide general information should they wish an individual permit.

Another advantage of using the NOI is to ensure that the terms and conditions of the general permit continue in effect for those permittees that have submitted an NOI should the general permit expire and a new general permit is not issued in time. An even stronger case for the continuance of general permits can be made if the general permit is structured so as to require a new submission of an NOI just prior to the expiration date of the original general permit. (See discussion on Continuance of General Permits on page 31.)

The general permit should detail the information to be provided by the permittee in the NOI. In most instances, the NOI requires the name, address, and telephone number of the permit applicant, location of the facility (preferably in latitude and longitude), the responsible on-site official, and the name of the receiving water. Other items that might be required in an NOI could include a justification for coverage under the general permit, seasonal or locational (mobile facilities) discharge notifications or topographic maps and/or schematic drawings of the facility. The information required in the NOI should be tailored to the requirements of the permitting authority and the nature of the discharges being covered.[2] In addition, the

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[2] For mobile facilities, information concerning the general geographic area of operations would be required, along with notification of each instance of termination and initiation of discharges at new sites.

information required in the NOI should be sufficient to enable the permitting authority to determine if the particular facility qualifies for coverage under the general permit.

NOIs are not considered new Information Collection Requests (ICRs) and therefore are not required to be cleared with the Office of Management and Budget. The use of NOIs was incorporated in the generic ICR submission covering the NPDES permit program, which was cleared by the Office of Management and Budget on July 18, 1985 and is effective through July 31, 1988.

Variances and General Permits

Normally, an individual permittee is able to request a variance from otherwise applicable effluent limitations. The types of variances available and the timeframes for requesting such variances are detailed in 40 CFR 122.21(l) and (m). Some States have suggested that it might be appropriate to grant a variance to all dischargers covered under a general permit (i.e., the general permit terms and conditions would contain the variance). It is EPA's position that it is inappropriate to grant variances in general permits.

However, a discharger who would be covered under a general permit still has the right to request a variance. First, an individual discharger could request a variance during the public comment period on the general permit, which would then be processed according to the applicable regulations. If the variance were granted, the discharger would be issued an

individual NPDES permit. Second, the discharger could submit an individual permit application, thereby "opting out" of general permit coverage. This application could include a request for a variance.

State Role in Development and Oversight

NPDES States with general permit authority are responsible for the development, issuance and enforcement of general permits covering dischargers within the State. All State draft or proposed (see, 40 CFR 122.2, Definitions, for the distinction between draft and proposed permits) general permits, except those for separate storm sewers, must be submitted to the appropriate EPA Regional Office and the Office of Water Enforcement and Permits for review and concurrence (see, 40 CFR 123.24(d) and 123.43(b)). The Regional Administrator, according to 40 CFR 123.44(j), may agree in the Memorandum of Agreement between EPA and the State to review draft general permits rather than proposed general permits. If such is the case, there is no need to also submit the proposed general permit to either the Regional Office or the Office of Water Enforcement and Permits unless the proposed general permit (1) differs from the draft permit, (2) the draft permit was objected to by the Regional Office or the Office of Water Enforcement and Permits, or (3) there were significant public comments on the draft permit. The submission of draft general permits should occur well in advance of public

notice of the draft general permit as this tends to expedite the review process.

EPA Regional Office Role in Development and Oversight

The EPA Regional Offices have three roles in the management of the general permit program. First, the Regional Office is responsible for the development of general permits in non-NPDES States.[3] In these instances, the EPA Region has control of the general permit issuance process. Second, if an approved NPDES State with general permit authority is developing the general permit, then the EPA Region will have an oversight role, as defined in 40 CFR Part 123 and in the Memorandum of Agreement between the Region and the NPDES State. The EPA Regional Office staff should work closely with the State in developing the draft general permit in order to avoid unnecessary delays.

The third role of the EPA Regional Offices is to work with EPA Headquarters to assist NPDES States without general permit authority in developing the necessary statutory and regulatory framework for assuming the general permit program. In addition, the Regional Offices are responsible for keeping EPA Headquarters informed of new issues concerning general permits, as well as working with EPA Headquarters in addressing such issues.

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[3] EPA Regional Offices cannot issue general permits covering dischargers in States with NPDES authority, even if the State does not have general permit authority.

EPA Headquarters Role in Development and Oversight

EPA Headquarters developed procedures for the review of all draft and final NPDES general permits that were detailed in a September 27, 1983 memorandum to the EPA Regional Water Management Division Directors. In essence, these review procedures provided for a 10-day review of draft general permits and a 5-day review of final general permits by Headquarters.

EPA Headquarters has decided to waive its review and concurrence on all non-offshore oil and gas general permits, partly because States and Regions have gained sufficient experience in the use of the general permit mechanism, and also partly because Headquarters views the issuance of non-offshore oil and gas general permits as somewhat routine. Non-offshore oil and gas general permits include, for example, feedlots or onshore oil and gas facilities. Thus, EPA Headquarters will formally review and concur on draft or final general permits only for offshore oil and gas activities and will conform to the review procedures established in the September 27, 1983, memorandum for these general permits. (See Appendix B for a copy of the September 27, 1983 review procedures. Appendix B also contains a guidance document, dated July 3, 1985, that provides information on the NPDES permitting process for oil and gas activities on the outer continental shelf and coordination with the Minerals Management Service.) In general, EPA Headquarters' waiver should speed up the issuance and promulgation of general permits.

Because 40 CFR 123.43, governing transmission of information to EPA from the States, and §124.58, governing special procedures for EPA-issued general permits, require that the Office of Water Enforcement and Permits receive copies of all draft and proposed general permits, whether State or EPA Regional Office general permits, copies should still be sent to EPA Headquarters. In addition, EPA Regional Offices will be required to prepare two semi-annual lists of non-offshore oil and gas general permits that (1) they or the States expect to issue in the upcoming six months and (2) that they or the States have issued in the preceding six months. These two lists should be submitted to the Office of Water Enforcement and Permits by October 1 and April 1 of each year. These lists will keep EPA Headquarters informed of those general permits being developed and issued and will allow Headquarters to distribute applicable general permits to other EPA Regions and NPDES States as models. Such lists will also allow EPA Headquarters to provide a measure of national consistency concerning general permits issued in different Regions and States.

Although EPA Headquarters has waived its review and concurrence of all non-offshore oil and gas general permits, this waiver may be revoked for general permits of national significance or those involving legal or technical issues of first impression. EPA Headquarters will examine the semi-annual lists and identify those non-offshore oil and gas general permits that merit review.

Continuation of a General Permit

Under Section 558(c) of the APA, an expired federally-issued permit continues in force until the effective date of a new permit, provided that the permittee has submitted a timely and sufficient application and EPA, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (see, 40 CFR 122.6). This is to protect the applicant from being jeopardized by EPA's delay or failure to reissue a permit.

Most States with NPDES authority have comparable laws or regulations (see, 40 CFR 122.6(b)). States, of course, are bound by their own statutory requirements regarding continuance.

With regard to general permits, it is EPA's position that an expired general permit continues in force and effect until a new general permit is issued. Only those facilities authorized to discharge under the expiring general permit are covered by the continued permit. Where the notification requirements of a general permit provide permit coverage prior to the actual commencement of operations at a site (e.g., mobile seafood processors), facilities providing such notice prior to the expiration of the general permit are covered by the continued general permit. Although EPA considers such continuance legally permissible,[4] permit continuance should be only a last resort.

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[4] However, there has been one adverse court decision on this issue. In Nunan Kitlutsisti v. Arco Alaska, Inc., (D.C. Alaska, 1984), 592 F.Supp. 832, the U.S. District Court held that an expired general permit is not continued under the APA as it is not a license "required" by law. (The court reasoned that

(See Appendix B for a January 16, 1984, memorandum containing a further discussion of continuance of EPA-issued NPDES general permits under the APA.)

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issuance or reissuance of a general permit was wholly within Agency discretion.) By the time this case was appealed, EPA had reissued the general permit. The 9th Circuit, finding that there was no longer a controversy between parties, declared the case to be moot and vacated the District Court's decision. Thus, the case is of limited precedential value.

CHAPTER 4

EXPERIENCE

Benefits and Limitations of General Permits

The use of general permits provide certain clear benefits to the permitting authority. General permits give permitting authorities the ability to cover a large number of facilities with one permit action, rather than multiple actions. In addition, the permitting authority has the ability to frame the general permit for a class or category of facilities within one geographical area such that any new facilities entering the area are automatically covered and new permit actions are therefore unnecessary. Permit authorities are also able to significantly reduce permit issuance backlogs in those instances where a large number of similar facilities are contributing to the backlog. This can be especially important in the handling of minor permit backlogs. General permits also provide a practical means to cover discharges from mobile sources within a geographic area; only one permit action is necessary instead of several.

Based upon its experience, the Office of Water Enforcement and Permits considers the benefits of general permits to far outweigh their disadvantages. However, there can also be certain drawbacks to the use of general permits that permitting authorities may need to address. Unlike individual permits, a larger share of the responsibility for the information gathering process leading to the development of a general permit falls on

the permitting authority rather than on the permit applicant(s), although the permitting authority can use existing information from a variety of sources (e.g., an industrial trade association) to develop the general permit. While certain disadvantages may make the issuance of general permits difficult in some cases, they clearly do not preclude the issuance of general permits. For instance, incorporating limitations protecting varying State water quality standards within a large geographical area can be difficult but not insurmountable. As mentioned previously, general permits can address these situations through a tiered approach to the requirements in the general permit. The need to have large numbers of similar facilities to make a general permit administratively worthwhile is often cited as a drawback to general permits. Although general permits are typically viewed as best suited to covering large numbers of similar facilities, general permits have also been issued to cover a modest number of facilities (e.g., a general permit was issued to cover 21 concentrated animal feeding operations in Arizona). In addition, issuance of a general permit to several facilities can be practical if more facilities are expected to enter the geographic area during the term of the permit or the discharges are from mobile sources within the permit area. At times the need to adhere to the APA (or the State equivalent) is viewed as a disadvantage. In fact, adherence to the procedures of the APA need not be burdensome and can lead to the development of effective and administratively supportable general permits, and

is certainly less burdensome than issuance of individual permits to each point source covered by the general permit.

Existing General Permits

A list of general permits already issued by either EPA or NPDES States is furnished as Appendix D. Appendix D also lists the Federal Register citations for each of the EPA-issued permits. EPA Headquarters has copies of these permits on file for distribution upon request. These general permits are available as models for new general permits to be developed by an EPA Region or NPDES States. These models will need to be modified in most cases to ensure that State water quality standards are protected.

Examples of Existing General Permits

Types of facilities covered under general permits include: oil and gas well operations; petroleum storage and transfer plants; seafood processors; construction dewatering activities; hydrostatic testing of pipelines; and non-contact cooling water. A few examples are:

1. Offshore Oil and Gas - (6 permits; 3,800 facilities covered)

The recent round of BPJ BAT/BCT general permits issued by Regions IV, VI, IX, and X is an example of how these general permits are becoming more common. The first BPJ BAT general

permit was issued by Region X for discharges in the Bering/Beaufort Seas. Region X has also issued a general permit for Norton Sound, Alaska that took advantage of the Region's experience with the Bering/Beaufort Seas general permit. Subsequent permits for the Gulf of Mexico, southern California, and Alaska have built upon EPA's experience with these early general permits.

The Gulf of Mexico general permit is a good example of how a general permit can be tailored to incorporate special limits based on an ODCE. The general permit authorizes discharges from any oil and gas facility discharging anywhere within the Gulf of Mexico outside the territorial seas of the coastal States. However, in and near ABCs, the permit will require one of two options. Where the Minerals Management Service (MMS) requires shunting (discharge through a pipe) to near the ocean floor, the NPDES permit will rely on shunting to protect the ABC. If MMS has not required shunting, or MMS has established "no activity zones" around ABCs, then the NPDES permit will require discharge rate limitations depending upon distance from the ABC. In the eastern Gulf of Mexico, where live bottom areas are ill defined, the general permit requires that an operator submit the live bottom survey required by MMS to EPA for decisions regarding ABCs and discharge rate limitations.

2. Concentrated Animal Feedlots - (4 permits; 450 feedlots)

Region VIII developed two general permits for animal feedlots in several western States. Region IX used those general

permits as models in developing a general permit for Arizona and Region X used them as a model to develop a general permit for Idaho. The use of prior general permits as models has significantly reduced the work needed to develop general permits in Regions IX and X, although some issues were raised concerning permit limitations for feedlots confining more than 300, but fewer than 1,000, animal units.

3. Construction Activities & Hydrostatic Testing - (1 permit; 1,000 sites)

Region VIII developed a general permit that authorized discharges from construction dewatering and hydrostatic testing activities. This one general permit was written to cover both types of discharges because both occur during the construction of pipelines. Since the discharge of water from construction pits almost always occurs in any type of construction, Region VIII worked with construction trade associations in developing the terms and requirements of the general permit.

Compliance Monitoring and Enforcement

General permits will be effective only to the extent that permitting authorities (either EPA or NPDES States) are able to systematically and efficiently identify instances of non-compliance with the terms and conditions of the general permit, and then to take timely and appropriate enforcement action to achieve full compliance by the permittee.

The requirements for NPDES permit program compliance monitoring and enforcement are found at 40 CFR Part 123. Specifically, 40 CFR 123.26, 123.27, and 123.45 detail the measures that the EPA Regional Offices and those States approved to administer the NPDES permit program in lieu of EPA are required to implement and conduct with regards to compliance evaluations, enforcement and noncompliance and program reporting. There is no one "correct" administrative system, although 40 CFR Part 123 discusses the minimum basic principles for an effective compliance tracking and enforcement system; differences in organizational structure, staffing, and State laws and regulations will necessitate different systems from State to State. For detailed information on the specifics required of compliance monitoring and enforcement programs, contact J. William Jordan, Director, Enforcement Division, Office of Water Enforcement and Permits (EN-338).

In general, EPA Headquarters recommends the assignment of a unique permit number to each permittee covered under a general permit.[5] (See discussion at 23-26, above, concerning the use of

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[5] Each general permit is issued with a specific 9-character alpha-numeric code. the first two characters are letters representing the State or area covered by the general permit (e.g., "NY for New York, "CA for California, "GM" for Gulf of Mexico). The next character must be a "G" for General Permit. The fourth and fifth characters are the two-digit code for the industrial category covered by the general permit (e.g., "28" for offshore oil and gas, "01" for animal feedlots, "99" for unassigned industries). (A complete list of industrial categories is set forth in Appendix H.) The last four categories should be zeros ("0000"), to allow up to 9,999 individual facilities to be covered by the general permit (0001-9999). Then, as each facility submits an NOI, a specific permit number

NOIs to allow the permitting authority to identify permittees covered under the general permit.) This approach allows for the tracking of compliance activities at each individual site covered under the general permit. Information specific to each permittee covered by the general permit should be entered into the Permit Compliance System (PCS, the automated NPDES data base). States that are not regular users of PCS, and do not have an automated system that is compatible, should supply data to the applicable EPA Regional Office in a form that allows the Regional Office to enter the data into PCS.

The PCS system currently considers general permits to be "minor" permits, although some consideration has been given to changing the system to more accurately characterize general permits (e.g., a distinct classification as is currently the case for Federal facilities). Generally, "major" permits require monthly Discharge Monitoring Reports (DMRs), with the information contained therein entered into PCS. "Minor" permits generally contain quarterly monitoring requirements. There should also be a routine schedule for updating the inventory of permittees covered under the general permit to reflect changes in basic information, such as changes in the ownership/address of a source. The more frequently the information is updated and entered into PCS, the greater the confidence and usefulness of PCS.

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is assigned for that facility (e.g., AZG010001, AZG010002, etc.). Further information may be obtained by calling the PCS User Support Hotline (202-475-8529).

CHAPTER 5

STATE PROGRAM APPROVAL PROCEDURES

General

Obtaining general permit authority gives a State the full range of regulatory options for controlling point source dischargers.[6] As of this writing, 13 States have been approved to issue general permits for point sources, and several other States are at various stages of receiving approval for issuance of NPDES permits. As noted earlier, general permit approval allows States to issue permits covering multiple sources and are thus able to reduce substantially their permit backlogs. Obtaining approval to issue general permits is a straightforward, step-by-step process that is described in detail in this Chapter. Usually, obtaining general permit authority is not complex because most State statutes do not preclude the issuance of general permits. The State need only point to general authority to issue permits; specific statutory authority to issue general permits is not necessary. In most instances, the State Attorney General need only certify to EPA that State law is adequate to carry out the general permit program.

An approved NPDES State's plan to implement a general permit program is processed as a revision or modification of its NPDES

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[6] Some NPDES States have issued general permits without first obtaining EPA authorization. While these general permits may be legal State permits, they are not NPDES permits and dischargers are considered to be in violation of the CWA, unless they are also covered by an individual NPDES permit.

program. First, the State statutes, regulations, and NPDES program submission (Attorney General's Statement, Memorandum of Agreement, and Program Description) are reviewed by the State to determine if adequate authority exists to administer NPDES general permits. After any necessary amendments are made, the State submits its program modification to the EPA through the applicable Regional Office.

The authority to approve State NPDES programs and program modifications has been delegated to the EPA Regional Administrators, with certain restrictions. (See, EPA Delegations Manual, Chapter 2, No. 2-34, State NPDES Program, dated July 25, 1984.) Early coordination between the State, the Regional Office, and EPA Headquarters on program approvals and program modifications is important if the review and approval process is to proceed rapidly and delays are to be minimized. (See discussion on page 45.)

In the case of program modifications, the Regional Administrator makes a determination as to whether the program modification is "substantial." (See, 40 CFR 123.62(b)(2).) There are many reasons why a State's request for general permit authority should be treated as a substantial program modification. A general permit program can have the potential for widespread impacts upon point source dischargers within the State. In addition, the State may have to enact important regulatory and/or statutory changes to allow for issuance of general permits. Other legal issues may also be involved, such

as potentially conflicting State statutes. The public participation elements of a State's general permit authority are often crucial because of concerns relating to specific point sources that could potentially be covered under a general permit. Changes made to ensure public participation in the general permit program may make the program modification substantial.

A substantial program modification triggers two requirements. First, substantial program modifications are subject to public notice and comment procedures. Second, Headquarters' concurrence is required.

Review of State Statutory Provisions

The State statutes must be analyzed for general permit authority. The existing permitting authority provided in the statute -- the directives to the permitting authority and/or the Director, the general prohibition against discharging without a permit, and the enforcement authority -- should be reviewed to assure that there is authority to issue and enforce general permits and particularly that any applicable State-specific administrative law requirements are not limited to individual permits. If general permit authority is provided in the statute, it should be reviewed to make certain that it is not limited to particular classes of dischargers, as this may be interpreted to prohibit general permit issuance for categories which are not mentioned. Of course, a State may wish to only provide for the

use of general permits for certain point sources; if so, EPA approval will be limited to those categories.

Review of State Regulatory Requirements

The State should have regulations analogous to 40 CFR 122.28, containing the substantive authority to issue general permits. The State regulations should describe:

- the geographic area for which general permits may be written;
- the criteria for selecting categories for coverage, comparable to 40 CFR 122.28(a)(2); and
- the criteria for requiring or authorizing (upon request) individual permits for specific dischargers.

The State regulations must be at least as stringent as the federal NPDES regulations.

The State regulations requiring that all dischargers into waters of the U.S. obtain permits should be reviewed; they may have to be amended to add a qualifier for general permits. This may be necessary if the language of the regulations or statute seems to envision only the issuance of individual permits. If the current statute is of the type described above, the Attorney General must explain why general permits are also allowed.

The State regulations must also contain procedural requirements for general permit issuance. The regulations must require the State Director, once he or she has made a tentative determination to issue a general permit, to prepare a draft general

permit (40 CFR 124.10(c)). The regulations must require that draft permits contain the requirements set forth in 40 CFR 124.10(d): (1) necessary conditions (the same conditions required to be contained in individual permits); (2) immediate compliance with the terms and conditions of the general permit; (3) monitoring requirements; and (4) applicable effluent limitations, standards, and prohibitions. The regulations also must require that all draft general permits be accompanied by fact sheets (see, 40 CFR 124.8(a)), which set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. Of course, the State regulations also must provide for public participation in the issuance of general permits just as for individual permits (see, 40 CFR 124.10).

Modification of State Program

If general permit authority was not contemplated at the time the State sought approval to administer the NPDES program, some revisions to the State program submission will be necessary.

A program submission must contain an Attorney General's Statement to the effect that the laws of the State are adequate to carry out the program (see, 40 CFR 123.23). This applies equally when general permit program approval is sought. If the State is already approved to administer the NPDES program, its general permit program submission must contain a supplemental Attorney General's Statement certifying that the laws and

regulations of the State provide adequate legal authority to issue and enforce general permits in accordance with 40 CFR 122.28. This statement must include specific citations to statutes and regulations that have been lawfully adopted at the time the statement is signed and that will be fully effective by the time the program is approved. Appendix E provides an example of a supplemental Attorney General's Statement.

The Memorandum of Agreement (MOA) submitted as part of the original program must be examined to determine whether any of its provisions restrict the State's authority to implement a general permit program. If it does, the Regional Administrator must require submission of a modified MOA. In addition, if the MOA provides for procedures different from those specified in the federal regulations, it would have to be changed. For example, 40 CFR 123.44(a)(2) requires that the MOA provide for 90-day review by EPA of general permits. Appendix F contains an example of a modified MOA.

As mentioned previously, the determination of whether the request for general permit authority is a substantial program modification rests with the Regional Administrator. In the case of general permit submissions that are considered substantial, 40 CFR 123.62(b)(2) requires public notice of the revision and 30 days for public comment. The public notice must be mailed to interested persons and be published in the Federal Register, and in the largest newspapers in the State to provide statewide coverage. It must summarize the proposed revision and provide

for the opportunity to request a public hearing. Such a hearing will be held if there is significant public interest based on requests received. This is the responsibility of the EPA Regional Office.

After consideration of the public comments and any hearing held on the program modification, the Regional Administrator, determines whether to approve or deny the modification. The modification does not become effective until approved by EPA. Approvals of substantial program modifications are published in the Federal Register.

If the Regional Administrator determines that the proposed modification is not substantial, the Regional Administrator may approve or deny the modification without public comment by notice of the decision in a letter to the Governor or his designee (usually the State Program Director).

Headquarters' Concurrence in Program Approvals and Modifications

Although the authority to approve State NPDES permit programs and program modifications has been delegated to the Regional Administrators, EPA Headquarters remains involved in the program approval and modification process. The July 25, 1984 State NPDES program delegation provides that EPA Headquarters, both the Director of the Office of Water Enforcement and Permits and the Associate General Counsel, Water Division, must concur in any determination as to the completeness of State program or program modification submittals. In addition, no decision by the

Regional Administrator concerning final approval of a State NPDES program or (substantial) modification to a State program can be made without the concurrence of the two Headquarters offices. Denials of program approval or program modifications may be made by the Regional Administrator without EPA Headquarters formal concurrence, although the Regional Offices should keep Headquarters apprised of all State NPDES activities.

While the delegation document provides that no Headquarters concurrence is necessary for approvals of non-substantial modifications to a State NPDES permit program, Headquarters' concurrence is necessary on the completeness determination that preceeds any decision on a minor modification to a State NPDES permit program. This means that a concurrence package on the completeness determination similar to that used for State program approvals must also be submitted to EPA Headquarters prior to any proposed insubstantial modification. Thus, in effect, Headquarters must concur twice on any program approval or approval of a substantial program modification--once on the completeness decision of the submittal and again on the decision to approve either the program or the substantial modification. It should be noted that any modification, substantial or not, which adds a component (in this case, general permit authority) to any State program will be published in the Federal Register. As mentioned previously, early coordination with EPA Headquarters will ensure that the concurrence process proceeds smoothly and expeditiously.

APPENDIX A

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

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Federal Register (FR) Publication Requirements for Draft and Final General NPDES Permits

TO: Water Management Division Directors
Regions I, II, III, IV, VI, VIII, IX and X

FROM: Martha G. Prothro, Director MGP
Permits Division (EN-336)

ntil the Office of Management and Budget (OMB) waived review of EPA issued general permits on November 3, 1983, the Permits Division used OMB's review period to correct FR format problems in any pending permits. We can no longer provide that service without delaying permit publication and issuance.

The Office of Standards and Regulations has prepared a checklist for all FR submissions and has advised us that documents will be returned to our office if they are not properly prepared and submitted. Therefore, we are requesting that your staff ensure that each notice is complete and correct before it is submitted to us.

Executive Order 12291

With the waiver of Executive Order review, all general permit fact sheets and/or FR notices should contain the following statement:

> The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to Section 8(b) of that order.

Regulatory Flexibility Act

All notices and/or permit fact sheets should contain the following statement:

> After review of the facts presented in the notice printed above, I hereby certify pursuant to the provisions of 5 U.S.C. 605(b) that this (these) general NPDES permit(s) do (will) not have a significant impact on a substantial number of small entities. Moreover, the permit(s) reduce(s) a significant administrative burden on regulated sources.

Paperwork Reduction Act (PRA)

In most cases, all of the monitoring, recordkeeping, and reporting requirements in a general permit are covered under existing generic information collection clearance requests (ICRs).* Where the requirements are already covered by our generic ICRs, the general permit should contain the following statement:

> EPA has reviewed the requirements imposed on regulated facilities in this (these) draft (final) general permit(s) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The information collection requirements of this (these) permit(s) have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

Should the Region be aware of or should Headquarters identify a permit requirement(s) that is not covered by an existing ICR, an estimate of the burden hours associated with the provision(s) must be prepared by the Region and submitted with each general permit. The Permits Division will prepare the required material for OMB review under the PRA at the time of publication of the draft permit in the FR. OMB is required to comment on paperwork issues during the public comment period. In such cases the required language is:

> For draft permits:
>
> EPA has reviewed the requirements imposed in regulated facilities in this (these) draft general NPDES permit(s)

---

* Generally, information collection requirements provided for specifically in the NPDES regulations have been covered by the Permits Division in its generic ICR submitted to OMB. However, these clearances basically cover only routine information collection. Activities such as underwater diving inspections, monitoring required pursuant to section 403(c) guidelines, etc. would not be covered. (Please feel free to consult with us on any specific requirements for which the status of a clearance request is unclear.)

under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The information collection requirements of the permit(s), with the exception of Part(s) (insert section number and titles from permit), have been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act. Estimates of the burden hours associated with these excepted provisions have been prepared and submitted to OMB for review at the time of publication of this notice.

For final permits:

No comments from OMB or the public were received on the information collection requirements in this (these) permit(s).

or

Any comments to EPA from OMB or the public on the information collection requirements in the (these) permit(s) appear in the public comment, section of this notice at _____.

Please be advised that clearance of new requirements not covered by the generic requests could delay permit issuance due to OMB review. However, where such requirements are necessary or appropriate, they should be imposed and the anticipated small increase in overall burdens of the program should be defensible. Major delays for this reason are unlikely in my judgment.

General Administrative Requirements

1. The document should be correctly classified as a proposed or final permit in the title.

2. The document should contain each of the preamble elements. AGENCY, ACTION, SUMMARY, DATES, ADDRESSES, FOR FURTHER INFORMATION CONTACT, AND SUPPLEMENTARY INFORMATION

3. The SUMMARY should state in a sentence or two what you're doing, why you're doing it, and the intended effect of the action.

4. The pages should be numbered at the top.

5. The document should be double spaced and printed in 12 pitch.

6. All signatures should be followed by a signature block. (If someone signs for the Regional Administrator or the Water

Management Division Director, include both names in the signature block (e.g., L. Edwin Coate Acting for, Ernesta Barnes, Regional Administrator).

7. The submission should contain an S.F. 2340-15 Federal Register Typesetting Form with the required signatures in place.

8. The cost of publishing the document should be estimated as follows:

   2 pages = 1 FR column = $136.00
   photocopied pages = $350.00 (i.e., maps or reprinted effluent limitations pages)

If you or your staff have further questions on these matters please contact Michelle Hiller of my staff (426-4793). Your efforts to ensure that these documents are properly prepared will eliminate unnecessary delays in Federal Register submissions.

cc: Water Management Division Directors
Regions V and VII
Director, Enforcement Division, OWEP

APPENDIX B

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

OFFICE OF WATER

JAN 16 1984

MEMORANDUM

SUBJECT: Continuance of NPDES General Permits Under the APA

FROM: Bruce R. Barrett, Director
Office of Water Enforcement and Permits (EN-335)

TO: Regional Water Management Division Directors
Regional Counsels

We have received a number of inquiries as to whether continuation of expired general permits is allowed under the Administrative Procedure Act (APA) and the NPDES regulations. A recent Office of General Counsel (OGC) opinion (attached) indicates that such continuance is legally permissible. However, there are important reasons for EPA not to rely on APA continuance except in extreme cases where permit reissuance is delayed for unexpected or unavoidable reasons. This memorandum addresses the general permit reissuance process in light of OGC's recent review of the continuance issue.

SUMMARY

NPDES general permits may be continued under the APA where the Agency has failed to reissue the permit prior to expiration. Although continuance is legally permissible, permits should be continued only as a last resort and continuance should be avoided by timely reissuance of general permits wherever possible.

Because of the geographic scope of general permits and the number of facilities covered, continuance could raise questions as to whether EPA has adequately considered long-term cumulative environmental impacts, exacerbate the permit issuance backlog, and create new issues or workload problems associated with new facility permits since new facilities cannot be covered by a continued permit. Continuance is generally avoidable given adequate planning. Where continuance is unavoidable, it should be for the shortest possible time. Upon determining that a general permit will not be reissued prior to expiration, the

Regional Water Management Division Director should inform the Permits Division Director and provide a specific schedule for completing reissuance.

IMPLEMENTATION

The following requirements govern the continuance of general permits:

- Only those facilities authorized to discharge under the expiring general permit are covered by the continued permit.
- Where the notification requirements of a general permit provide permit coverage prior to the actual commencement of operations at a site (e.g., mobile seafood processors and oil and gas drilling vessels) facilities providing such notice prior to expiration are covered by the continued permit.
- At least six months prior to the expiration date of a general permit, the Regional Water Management Division Director should submit a draft general permit and a schedule for permit issuance or reissuance to the Permits Division Director. If a draft general permit is not ready at that time, an explanation of the reasons for delay and a schedule for permit development and reissuance, should be submitted instead. The Permits Division Director will expedite permit issuance and reissuance processes at headquarters as much as possible and will inform upper management in the Office of Water of any significant delays.

DISCUSSION

As with individual NPDES permits, it may become necessary to administratively continue a general NPDES permit when reissuance of the permit or issuance of a new permit is impossible before permit expiration. The APA allows for continuance of a Federal license or permit when a permittee has made a timely and complete application for a new permit. Until OGC's recent review of the issue, OWEP had advised the Regional Offices that general permits could not be continued under the APA because the NPDES regulations do not require applications for general permits. OWEP requested that OGC review and provide a written opinion on this issue since a number of parties had questioned our legal position. On November 17, 1983, OGC informed OWEP that general permits can legally be continued under the APA.

There are a number of strong policy and program reasons to ssure timely reissuance rather than relying on APA continuance. any general permits cover several dozens or even hundreds of individual facilities. The large number of facilities covered and the broad geographic coverage tend to focus industry and public attention on Agency inaction when the permit is allowed to expire, especially in the early stages of implementation of the general permit program.

Many general permits are controversial at the time of initial permit issuance. Similar controversies can be anticipated during reissuance. EPA cannqt allow the public to perceive that we are avoiding these issues through administrative continuance of expired permits. For example, cumulative environmental impact assessments hinge on the number and volume of discharges. Information gathered during the term of the original permit may justify new permit limitations, terms and conditions at the time of reissuance. For marine dischargers, determinations pursuant to §403(c) of the Clean Water Act are usually dependent on the estimates of the number of facilities that will discharge during the term of the permit. Delay in updating these determinations raises questions about potential environmental impacts and the efficacy of permit conditions. Similar issues arise where there have been new standards or effluent limitation guidelines promulgated during the course the permit or changes in the CWA or applicable requirements der other applicable statutes (e.g., Coastal Zone Management Act, Endangered Species Act).

Finally, a major goal of the general permit program is to reduce the Agency's NPDES permit issuance backlog. Allowing general permits to expire aggravates the backlog problems. In addition, new dischargers would not be covered until EPA reissued the general permit. Since these facilities would be liable for discharge without a permit, they would likely request an individual permit and be required to submit a full application and do appropriate testing. This creates a permit issuance workload demand that would be avoided by timely reissuance of the general permit, as well as putting burdens on permit applicants that would be removed by reissuance of the general permit.

Given the drawbacks and problems, administrative continuance of general permits should be the exception rather than the rule. Adequate planning and timely permit preparation will allow us to avoid the necessity to use administrative continuance except as a stop gap, short term measure. The Office of Water Enforcement and Permits will work with the Regions to avoid continuance wherever possible.

Colburn T. Cherney, OGC

Attachment

NOV 17 1983

MEMORANDUM

SUBJECT: Continuance of NPDES General Permits Under the Administrative Procedures Act (APA)

FROM: Margaret B. Silver
Attorney
Water Division (LE-132W)

THRU: Colburn T. Cherney
Acting Associate General Counsel
Water Division (LE-132W)

TO: Bruce Barrett
Director
Office of Water Enforcement
and Permits (EN-335)

This memorandum responds to your request for a legal opinion on several issues related to the expiration, reissuance, and continuance of general permits under the APA.

(1) Issue: Can a general permit be continued under the APA in the absence of a renewal application requirement?

Response: A good legal argument can be made that a general permit may be continued under the APA, even though there is no specific requirement for a renewal application.

Discussion:

Section 9(b) of the APA, 5 U.S.C. §558(c), provides that:

> When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

This provision allows a licensee (i.e., permittee) to lawfully continue its licensed activity after its license has expired when the issuing agency has failed to act on the licensee's renewal application.

The purpose of this provision is clearly set out in the legislative history of the APA:

> [This provision is] necessary because of the very severe consequences of the conferring of licensing authority upon administrative agencies. The burden is upon private parties to apply for licenses or renewals. If agencies are dilatory in either kind of application, parties are subject to irreparable injuries unless safeguards are provided. The purpose of this section is to remove the threat of disastrous, arbitrary, and irremediable administrative action.

92 Cong. Rec. 5654 (1946) (remarks of Representative Walter).

The courts have consistently relied on this statement of legislative intent in construing the purpose of this provision. In Committee for Open Media v. FCC, 543 F.2d 861 (D.C. Cir. 1976) the D.C. Circuit described the purpose of this section as the "protection of licensees from the uncertainties stemming from protracted administrative consideration of applications for license renewals." Id. at 867. In County of Sullivan v. CAB, 436 F.2d 1096 (2nd Cir. 1971), Judge Friendly agreed that section 9(b) was intended to protect licensees from an agency's failure to act: "[t]he valuable rights conferred by a license for a limited term shall not be lost simply because the agency has not managed to decide the application before expiration of the existing license." Id. at 1099. The court in Banker's Life & Casualty Co. v. Calloway, 530 F.2d 625 (5th Cir. 1976) quoted Judge Friendly's language and added that "the kind of case that the statute was meant to cover was that in which time exigencies within the agency prevent it from passing on a renewal application, where an activity of a continuing nature is involved." Id. at 634.

Section 9(b) of the APA requires the licensee to make "timely and sufficient application for a renewal ... in accordance with agency rules" to qualify for continuance of its permit. The issue that has been raised is whether the APA continuance provision applies to NPDES general permits since there is no renewal application requirement for such permits. In the case of an individual NPDES permit, the permit holder must submit an application to renew its permit, so the issue does not arise. 1/ Persons who wish to be

1/ The NPDES regulations recognize that the APA continuance provision applies to individual NPDES permits. 40 CFR 122.6(a).

covered under a general permit, however, generally need only submit a "notice of intent to be covered" by the general permit, after the general permit is issued. 2/ Neither the terms of the general permit nor the NPDES permit regulations discuss requirements for coverage after a general permit expires. In other words, in the case of an individual permit, the renewal process is initiated by the permit holder who must submit a renewal application, whereas the Agency must initiate the renewal process for a general permit because the Agency does not provide any opportunity for the permit holder to submit a renewal application.

Based on the overall purpose of Section 9(b), i.e., to limit continuance to situations where the Agency, and not the permittee, has failed to act, we believe it is reasonable to conclude that continuance of general permits is permissible when the Agency has not provided an opportunity to submit a renewal application. 3/ The APA requires the permittee to submit an application "in accordance with agency rules" as a condition for continuance. However, since the current agency rules do not provide a discharger covered under a general permit the opportunity to initiate renewal, the discharger has in essence done all it can to ensure continued permit coverage. Therefore, where "time exigencies" have prevented Agency action, it is a reasonable interpretation of the APA to allow a discharger the protection of the continuance provision where the permit has not been renewed through no fault of the discharger. We believe this position is fair, as well; it does not make sense for continuance to be available to individual permit holders, but not general permit holders, simply because the Agency has not provided for a renewal application for general permits. Also, not allowing continuance would seriously undermine the usefulness of general permits, which were designed to reduce both the regulatory burden on dischargers and the administrative burden on EPA.

Although we believe the position that general permits may be continued under the APA is legally defensible, we strongly recommend that the general permit provisions of the NPDES rules be amended to clarify this issue. The rules should explain how and when a general permit may be continued,

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2/ This is a requirement imposed by the terms of the general permit itself, not the NPDES regulations.

3/ Only dischargers covered under the original general permit would be entitled to operate under the continued permit. New dischargers, who would otherwise qualify for coverage under the general permit, could not be covered by the general permit until EPA had reissued it.

and who may discharge under the continued permit. At that time, we may want to consider imposing some sort of application requirement, such as a new notice of intent to be covered when a general permit is about to expire (this provision has appeared in draft amendments to the NPDES rules).

2) Issue: If the Agency conducted an assessment under Section 403(c) of the Clean Water Act before it issued a general permit, can the general permit be continued without a new assessment under the Ocean Discharge Criteria Guidelines? Is continuance affected by the similar requirements of the Endangered Species Act (ESA) and the Coastal Zone Management Act (CZMA)?

Response: A general permit may be continued without additional evaluations under Section 403(c), the Endangered Species Act, or the Coastal Zone Management Act.

Discussion:

As explained above, the APA continuance provision is a stop-gap measure designed to protect the permittee when the Agency has failed to reissue an expired permit. There is no requirement that the Agency have even begun the renewal process for continuance to occur. Since the 403(c), ESA, and CZMA determinations are conducted as part of the permit issuance (or reissuance) process, it is clear that the Agency need not complete any of these determinations before a general permit is continued. In fact, failure to make one or more of these determinations may be precisely the reason for the delay in reissuing the permit.

(3) Issue: What is the effect of issuance of a general permit on previously issued individual permits covering the same type of discharge?

Response: Persons who hold a current individual permit remain covered by that permit until they request coverage under the general permit (generally by submitting a notice of intent to be covered under the general permit) and EPA revokes the individual permit. Persons who hold expired, APA-continued individual permits are covered by the general permit as soon as EPA issues it.

Discussion:

Section 122.18 of the NPDES regulations states that after EPA issues a general permit, a discharger with an individual permit is not covered by the general permit until EPA revokes the individual permit. To date, each general permit has included this provision. It is not clear whether this provision

applies only to current individual permits, or to expired, APA-continued individual permits as well. We think the better reading is to limit this provision to current individual permits. 5/ In the case of an expired, APA-continued individual permit, we believe that issuance of a general permit that covers the discharge should be considered "Agency action" on the permittee's request for renewal of the individual permit (unless the terms of the general permit state otherwise) and that the discharger is covered by the general permit as of the effective date of the general permit. In addition, we believe a new notice of intent would be unnecessary in this case since the discharger has already submitted an application for renewal of its individual permit (both the notice of intent and renewal application serve a similar function, i.e., to inform the Agency who is discharging under the general permit).

Once again, it is important to spell out these provisions in future general permits, or better yet, in the NPDES rules. By distinguishing between current individual permits and expired, APA-continued permits, and the effect of issuing a general permit on each, it will be clear which permit (individual or general) is in effect for each discharge at any given time.

5/ For the sake of efficiency, we may want to consider revoking all outstanding individual permits as part of the general permit issuance proceeding, rather than revoking them individually.

Prepared by: MSILVER:krl:LE-132S:Rm. 539W:382-7706:9/27/83: 9/28/83:10/28/83:11/1/83:11/3/83:11/4/83:11/10/83: 11/16/83:11/17/83

APPENDIX C

OFFICE OF
WATER

SEP 27 1983

MEMORANDUM

SUBJECT: Final Procedures for the Review of Draft and Final General NPDES Permits

FROM: Bruce R. Barrett, Director
Office of Water Enforcement and Permits

TO: Water Management Division Directors

Regional Counsels

Rebecca W. Hanmer, Acting Assistant Administrator for Water

Colburn Cherney, Acting Associate General Counsel Water Division

Louise Jacobs, Associate Enforcement Counsel for Water

C. Ronald Smith, Director
Office of Standards and Regulations

Richard D. Morgenstern, Director
Office of Policy Analysis

Steven Schatzow, Director
Office of Water Regulations and Standards

This memorandum describes the final review procedures for draft and final general NPDES permits. These procedures have been reviewed and accepted by the affected program offices in Headquarters and the Water Management Division Directors. The new procedures outlined below should significantly reduce the problems that have occurred in developing, reviewing, and processing general permits.

- The attached general permits status report prepared by the Permits Division, OWEP represents a list of all general permits currently in development. Copies of the status report will be sent to the Water Management Division Directors and Headquarters program offices on a monthly basis. Headquarters program offices are requested to identify those permits which they consider important to review each month.

- Regional offices must submit all draft and final general permits to the Office of Water Enforcement and Permits, to the attention of the Permits Division Director. The Water Management Division Director and the Regional Counsel must review and sign all draft and final general permits submitted for Headquarters review. By so signing, these officials are certifying the programmatic, technical, and legal sufficiency of the general permit. General permits not duly signed will be returned to the Region.

- Headquarters review of general permits for concurrence will be limited to issues of national significance and consistency with regulations, national guidance, and relevant case law. Any other comments regarding provisions generally within the discretion of the permit writer (such as technical adequacy, identified water quality standards, or general clarity, quality or enforceability) will be suggestions only.

- Formal communications on general permit issues and Headquarters' concurrence will occur between the Director of the Permits Division and the Water Management Division Director. However, we continue to encourage staff level discussions concerning permit development so that issues can be resolved, to the maximum extent possible, before review for headquarters concurrence.

- The Permits Division Director is to receive all comments from other Headquarters offices on draft general permits in ten working days. In the review of draft general permits, the Permits Division will identify to the Regional Office any issues which could lead to non-concurrence on the final. Generally, further processing of the draft permit will not be delayed while Headquarters' comments are being addressed by the Region prior to final promulgation. However, there may be occasions involving an issue significant enough to require modification of the fact sheet or draft permit before publication. If Headquarters review identifies a need for a change in the draft permit, the Permits Division Director will notify the Water Management Division Director by phone within the next two working days

after the deadline for submittal of all Headquarters comments to the Permits Division. Written comments will be sent from the Permits Division Director to the Water Management Division Director within five working days after the deadline for submittal of all Headquarters comments to the Permits Division. If the Water Management Division Director does not hear from the Permits Division Director within five days of the end of the Headquarters review period, he may assume that the Permits Division is processing the permit.

- The procedures for the review of final general permits will be the same as those for draft permits except that Headquarters review time will be shorter. The July 1982 streamlined review process provides that the review period is five working days unless the final permit differs significantly from the draft. (In such cases the review period is specified as ten days.)

On August 8, 1983, the Office of Policy and Resource Management and the Office of Water requested an exemption for general NPDES permits from the review requirements of the Executive Order 12291 from the Office of Management and Budget (OMB). We understand that staff recommendations have been prepared for Robert Bedell, Deputy Administrator, and we expect a written response soon. We will make every effort to keep you informed on the request and OMB's response.

Thank you for your positive comments on these procedures, your efforts to follow them in the interim, and your continued support for the general permit program. Until an exemption is granted, both draft and final general permits must be submitted to OMB for review prior to publication in the Federal Register. Regardless, progress has been made. There was a time when a general permit status report included only permits for offshore oil and gas and animal feedlots.

Attachment

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

JL 3 1985

OFFICE OF WATER

MEMORANDUM

SUBJECT: Transmittal of General Permitting Strategy for OCS Oil and Gas Activities Under EPA/MMS MOU

FROM: Martha G. Prothro, Director
Permits Division, OWEP (EN-336) Martha G. Prothro

TO: William Dickerson, Director
Federal Agency Liaison Division, OFA (A-104)

Attached is a copy of the guidance document regarding the NPDES permitting process for offshore oil and gas activities. The Permits Division has prepared this as our action under Part IV.A. and Part IV.B. of the Memorandum of Understanding with the Minerals Management Service, signed on May 31, 1984. I hope that this will prove useful to the EPA and MMS staff as they coordinate activities under the MOU.

Please call me if you have any questions regarding this document, or have your staff call Edward Ovsenik (FTS 426-7035).

Attachment

June 18, 1985

The NPDES Permitting Process for Oil and Gas Activities on the Outer Continental Shelf

Prepared by the Permits Division
Office of Water Enforcement and Permits
United States Environmental Protection Agency

under the

Memorandum of Understanding between EPA
and the Minerals Management Service
of the Department of the Interior

Table of Contents

A. Introduction

The Environmental Protection Agency (EPA) regulates discharges associated with offshore oil and gas exploration, development, and production on the outer continental shelf (OCS) under the Clean Water Act's (the Act) National Pollutant Discharge Elimination System (NPDES) permit program. EPA Regional Offices issue permits to facilities discharging into ocean waters beyond the three mile limit of the territorial seas and may also issue permits to facilities in the territorial sea if the adjoining State does not have an approved NPDES program. Section 403 of the Act requires that NPDES permits for discharges into the territorial seas, the contiguous zone, and the oceans be issued in compliance with EPA's guidelines for determining the degradation of marine waters. The NPDES Regulations are found in 40 CFR Parts 122, 124 and 125.

B. Covered Facilities and Permit Areas

The traditional NPDES regulatory framework requires that an owner or operator file an application to begin the permit process. The NPDES regulations also authorize the issuance of a general permit for a category of point sources located in the same geographic area if their discharges warrant similar pollution control measures. 40 CFR §122.28. The regulations for general permits provide that sufficient information may be available to the Agency to determine permit conditions without application information. Therefore, general permits are issued without a named party and without application requirements.

The first step in the issuance of a general permit is the Director's determination that a category of point sources meets the requirements of §122.28. The Director is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;

2. Discharge the same types of wastes;

3. Require the same effluent limitations or operating conditions;

4. Require the same or similar monitoring requirements; and

5. In the opinion of the Director, are more appropriately controlled under the general permit than under individual permits.

Changes to the NPDES regulations on September 1, 1983 (48 FR 9619) also provide that the Regional Administrator (RA) shall issue general permits covering discharges from offshore oil and gas facilities within the Region's jurisdiction. Interested persons, including prospective permittees, may petition the RA to issue a general permit and the RA must promptly establish a project decision schedule for permit issuance. The project decision schedule provides final permit issuance no later than the final notice of sale or 6 months after the petition, whichever is later.

The decision to issue a general permit is dependent upon EPA having sufficient information to determine permit conditions and address the factors in the ocean discharge guidelines. With sufficient information, general permits may be issued for entire tracts or groups of tracts offered in OCS lease sales. Geographic or political boundaries defining the area to be covered are specified in each permit. These boundaries may be OCS lease sale areas defined in lease sale EISs, specific lease parcels, or isobaths surrounding areas of biological concern.

EPA may issue a general permit covering all lease sales occurring within the geographic scope of the permit during its five-year term. EPA also issues general permits only covering specific lease sales which have already occurred, or are about to occur. Currently, EPA Regions IV and VI are issuing one permit to cover all lease sale activities within the Gulf of Mexico. EPA Regions IX and X usually issue general permits for only specific lease sales. However, any general permit could be modified to include new lease sale areas during the permit term.

Areas of biological concern (ABCs) are areas which may require special permit conditions and/or effluent limitations which differ from those contained in a general permit for a broader area. In such cases, separate general permits may be necessary. If a lease sale contains several ABCs which require widely different permit terms and conditions, these areas may be more appropriately controlled by individual permits. EPA may also issue one general permit for the entire lease sale area, with one set of effluent limitations established for the broad area, and a second set of limitations for the ABCs.

General permits may be issued for all discharges in the geographic area of the permit (i.e. exploratory, development, and production facilities). However, EPA may also issue a general permit authorizing discharges only from exploratory facilities, with a seperate general permit for the development and production facilities. EPA Regions will issue general permits for exploratory facilities first, and wait to determine the interest in the area for development and production, and the possible number of development and production facilities before issuing a develoment and production general permit.

C. Provisions for Permit Modification and Revocation

The NPDES regulations provide for modification of a general permit for any of the causes in §122.62, including information which indicates unacceptable cumulative impacts (§122.62(a)(2).). The results of any testing required by Section 403(c) may indicate that the general permit should be modified or revoked. If on-site monitoring indicates that an individual permit should be required, §122.28(b)(2)(iv) provides that a general permit terminates on the effective date of an individual permit. All permit modifications or revocations are handled in accordance with §124.5, and requests for modification, revocation, or termination must be in writing and contain facts or reasons supporting the request. The RA may deny the request (§124.5(b)) or prepare a new draft permit incorporating the proposed changes. The procedures for processing the new permit are the same as for all draft permits (§124.6).

D. Provisions for Individual Permits

Any owner or operator authorized to discharge by a general permit may apply for an individual permit; any interested person may petition the Director to require a facility to obtain an individual permit; and the Director may require an owner or operator to apply for and obtain an individual permit on his own initiative. The criteria in §122.28(b)(2) define cases which may require an individual NPDES permit:

1. The discharge(s) is a significant contributor of pollution;

2. The discharger is not in compliance with the terms and conditions of the general permit;

3. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

4. Effluent guidelines are subsequently promulgated for the point sources covered by the general permits;

5. A Water Quality Management Plan containing requirements applicable to such point sources is approved; or

6. The requirements listed in §122.28(a) are not met (See A. and B. above).

However, changes in pollutant control or abatement technology, effluent guidelines, or water quality standards may more appropriately be addressed through permit modification, or revocation and reissuance if the changes affect a large number of point sources operating under a general permit.

E. Existing Sources, New Dischargers, and New Sources

General permits for offshore oil and gas activities authorize discharges for 'existing sources' and 'new dischargers' (40 CFR §§ 122.2, 122.29(a).). Current general permits do not authorize discharges from 'new sources' as the Agency has not promulgated new source performance standards (NSPS) for the oil and gas extraction point source category, and therefore no new sources are currently operating (122.2, 122.29(b).). When NSPS are promulgated, EPA will have an independent obligation under the National Environmental Policy Act (NEPA) to complete an environmental review for EPA issued oil and gas NPDES permits. Therefore, NEPA compliance will be required for general permits covering Federal waters and the territorial seas of the States that do not have NPDES permit authority. States issuing NPDES permits for their territorial seas have no such NEPA compliance obligations. See 40 CFR 122.29(c)(1).

Mobile drilling units used in exploratory operations -- operations to identify and determine the extent of oil and gas reserves -- are existing sources except in environmentally sensitive areas. Mobile drilling units in areas of biological concern (ABCs) are considered new dischargers after each move within an ABC. The fact sheet of each general permit describes the RA's determination of ABCs affecting new discharger status for mobile drilling units. In determining if an area is an ABC, the RA considers the factors specified in the 403(c) guidelines at 40 CFR 125.122(a)(1) through (10). (See page 7.)

F. Effective Dates

Section 124.15 provides that permits are effective 30 days after final issuance unless 1) a later date is specified in the permit or 2) no comments requesting a change in the draft were received during the comment period. General permits are issued as rulemaking proceedings under the Administrative Procedure Act (APA; 5 U.S.C. §551 et seq.). The APA requires 30-day notice of final rules to allow for administrative appeal and review. Because NPDES general permits are not administratively reviewable, this provision does not apply. Therefore, EPA normally writes general permits to be effective on the date of final publication in the Federal Register. Section 122.46 provides that NPDES permits are effective for a fixed term, not to exceed 5 years.

G. State Certification

Under section 401(a)(1) of the Act, EPA may not issue a permit until certification is granted or waived by the State in which the discharge originates. State certification of general permits covering federal waters is not mandated by statute or regulations. Federal waters are defined as all waters on the Outer Continental Shelf (OCS) beyond any State's Territorial Seas (as defined at Section 502 of the Act). However, the Director

of a permit program may determine that State review of a federal waters permit is appropriate. The Director, pursuant to §124.53, then must send the certifying State agency:

1. A copy of the draft permit;

2. A statement that EPA cannot issue or deny the permit until the certifying State agency has granted or denied certification or waived its right to certify; and,

3. A statement that the State will be deemed to have waived its right to certify unless that right is excercised within a specified reasonable time, not to exceed 60 days.

State certification of a permit requires that the State agency identify more stringent conditions which the State finds necessary to meet applicable conditions of section 208(e), 301, 302, 303, 306, and 307 of the CWA and other requirements of State law. The State must also provide a statement of the extent to which each condition can be made less stringent without violating State law, including the appropriate State water quality standards.

Even though 401 State certification may not be required for federal waters, State participation in the permitting process is ensured under §124.10(c)(1) which requires that public notice, §403(c) determination, draft permits and fact sheets be provided by mail to affected States and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans.

H. Fact Sheet

Section 124.6(c) and (d) requires the Director to prepare a draft of each general permit. The fact sheet for the draft permit also sets forth the significant factual, legal, and policy questions considered in preparing the draft permit. Under §124.8 a fact sheet must include:

1. A brief description of the type of facility or activity;

2. A discussion of the type and quantity of pollutants to be discharged;

3. A brief summary of the basis for the draft permit conditions including:

   a. applicable statutory and regulatory requirements such as applicable effluent guidelines, and the basis for effluent limitations and permit conditions imposed under 403(c); and,

   b. supporting references to the administrative record.

4. Reasons why alternatives to required standards do or do not appear justified;

5. A description of the procedures for reaching a final decision on the draft permit including:

   a. the beginning and ending dates of the comment period and the address where comments will be received;

   b. procedures for requesting public hearings on a draft general permit and an explanation that the regulations do not provide for evidentiary hearings; and

   c. procedures by which the public may participate in the final permit decision including notice of public hearings if they have already been scheduled.

6. Name and telephone number of a person to contact for additional information.

7. The provisions of 40 CFR 124.56.

I. Technology Based Effluent Limitations

The Clean Water Act requires all dischargers to meet effluent limitations based on the technological capacity of dischargers to control the discharge of their pollutants. Section 301(b)(1)(A) requires the application of best practicable control technology currently available (BPT) no later than July 1, 1977. On April 13, 1979 EPA promulgated final effluent limitations guidelines establishing BPT for the Offshore Subcategory (40 CFR 435). Sections 301(b)(2)(A) and (B) require the application of the best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) to control the discharge of toxic and conventional pollutants by July 1, 1984. Effluent limitations establishing BAT and BCT for the subcategory have not been promulgated, therefore permits issued after June 30, 1984 are based on best professional judgement (BPJ) under Section 402(a)(1) of the Act. The factors considered in BPJ determinations are described in 40 CFR Part 122.44(a) and Part 125.3(d) (as amended September 26, 1984, 49 FR 38052). These factors are similar to the factors used in establishing the BAT/BCT effluent limitations guidelines.

Section 306 of the Act requires the application of best available demonstrated technology for new sources or new source performance standards (NSPS) in NPDES permits applicable to new sources. NSPS are based on the best available demonstrated technology for the industrial category. Since new sources have the opportunity to design the best and most efficient wastewater treatment technologies, the Agency considers the best demonstrated process changes and end-of-pipe treatment technologies that reduce pollution to the maximum extent feasible in the development of NSPS.

J. Ocean Discharge Criteria Guidelines

The final 403(c) Ocean Discharge Criteria guidelines 40 CFR Part 125 (45 FR 65952, October 3, 1980) set forth criteria for determinations of unreasonable degradation and irreparable harm which must be addressed prior to the issuance of a NPDES permit. The 403 decision logic is outlined in Appendix A.

The factors considered in a determination of unreasonable degradation are:

1. The quantities, composition and potential for bio-accumulation or persistence of the pollutants to be discharged;

2. The potential transport of such pollutants by biological, physical or chemical processes;

3. The composition and vulnerability of the biological communities which may be exposed to such pollutants including the presence of unique species, communities of species, the presence of species identified as endangered or threatened pursuant to the Endangered Species Act, or the presence of those species critical to the structure or function of the ecosystem such as those important for the food chain;

4. The importance of the receiving water area to the surrounding biological community, including the presence of spawning sites, nursery/forage areas, migratory pathways or areas necessary for other functions or critical stages in the life cycle of an organism;

5. The existence of special aquatic sites including, but not limited to, marine sanctuaries and refuges, parks, national and historic monuments, national seashores, wilderness areas and coral reefs;

6. Potential impacts on human health through direct and indirect pathways;

7. Existing or potential recreational and commericial fishing, including fin-fishing and shell-fishing;

8. Any applicable requirements of an approved Coastal Zone Management Plan;

9. Such other factors relating to the effects of the discharge as may be appropriate; and

10. Marine water quality criteria developed pursuant to Section 304(a)(1) of the Act.

The Agency's technical evaluation of drilling fluids discharged by oil and gas operations has identified certain operating conditions which could be incorporated in the NPDES permit in addition to BPT and BAT technologies to address water quality impacts. These conditions may include combinations of the following:

a. discharge of authorized drilling muds and additives for which the Agency has bioassay test data;

b. use of a 'buffer zone' around areas of biological concern in which the discharge of drilling fluids may be limited or restricted;

c. operational requirements such as predilution, discharge rate limitations, adequate dilution and dispersion of drilling fluids, and bulk discharge restrictions;

d. use of shunting to minimize water column impacts; and

e. use of a surface or near surface discharge requirement to minimize sediment impacts.

Permits may also include notification requirements for site-specific survey information to aid the Agency in determining the appropriateness of general permit coverage. This measure may be taken, for example, when the nature and extent of an area of biological concern in a frontier area has not been adequately defined. If site-specific information submitted with notification should indicate that the provisions of a general permit would not provide adequate protection of the site, the Director may then require the facility to apply for and obtain an individual permit.

K. Oil Spill Requirements

Section 311 of the Act prohibits the discharge of oil and hazardous materials in harmful quantities. Routine operating discharges are usually specifically controlled by a NPDES permit and are excluded from the provisions of Section 311. A NPDES permit does not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for unauthorized discharges of toxic pollutants, hazardous materials, or oil spills which are covered by Section 311 of the Act. Permittees may have a duty to report such unauthorized discharges to the Minerals Management Service, the United States Coast Guard, and/or the Environmental Protection Agency. EPA regulations codifying Section 311 are found at 40 CFR Parts 110, 112, 113, 114, 116, and 117. Amendments to the Part 110 regulations were proposed on March 11, 1985 (50 FR 9776 et seq.).

L. Other Legal Requirements

1. Endangered Species Act

The Endangered Species Act (ESA) requires that each federal agency shall ensure that none of its actions, including permit issuance, jeopardizes the continued existence of any endangered or threatened species or result in the destruction or adverse modification of their habitat.

For OCS general permits, the Agency follows the consultation procedures described in section 7 of the ESA. Formal consultation begins at the time of public notice of draft permits when EPA submits a written request to the Director or Regional Director of the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS). Once a request for consultation has been received NMFS has 60 days to submit a formal response to EPA. Since the Department of the Interior has 60 days to issue a biological opinion, final permit issuance can be significantly delayed. In addition, a determination by NMFS that insufficient information exists or that the permitting action may jeopardize endangered or threatened species would require EPA to obtain additonal information, potentially requiring the Agency to repropose draft permits.

Since the 403(c) guidelines require an evaluation of information on endangered species, informal requests and/or staff meetings are used to identify effected endangered species before permit proposal. A notice of intent to develop a general permit may include requests for identification of endangered species in the permit area, a description of critical life stages or activities affected, and potential impacts on critical habitat. Copies of the information used to complete the 403(c) determination, permit fact sheets, and draft permits may also be provided to the Service with a request for review prior to public notice. With sufficient information FWS and NMFS may be able to provide EPA with recommendations for the draft permit. The final biological opinion is placed in the administrative record for final permit issuance.

2. Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) Section 307(c)(3)(A) and its implementing regulations at 15 CFR Part 930 Subpart D require that consistency determinations be made for any federally licensed or permitted activity affecting the coastal zone of a State with an approved Coastal Zone Management Program. For permits covering federal waters, a decision to require CZMA consistency requires a demonstration that the permitted activity will affect the territorial seas or coastal waters of the approved State. Since there is no applicant for a general permit, the Agency, in effect, becomes the applicant and submits a general permit for consistency certification to the appropriate State agency. When EPA is the permit issuing authority within

the territorial seas, consistency determinations are required. For States with approved NPDES programs no CZM consistency is required for permits issued for territorial seas dischargers.

If it is determined that a consistency certification is required for a general permit, a notice of intent to develop a permit may request assistance and solicit recommendations from the State agency regarding the means for ensuring that the proposed activity will be conducted in a manner consistent with the State's management program. EPA provides the State with written certification that the proposed activity complies with, and will be conducted in a manner consistent with, the State's approved management program. The consistency certification is made at the time of public notice of draft permits and includes, in addition to the requirements described in the next paragraph, the 403(c) determinations, the fact sheet, and proposed draft permits.

With the consistency certification, EPA provides the State agency with the following data and information:

a. A detailed description of the proposed activity and its associated facilities to allow an assessment of their probable coastal zone effects.

b. A brief assessment relating the probable coastal zone effects of the proposed activity and its associated facilities to the relevant elements of the management program.

c. A brief set of findings, derived from the assessment, indicating that the proposed activity, its associated facilities and their primary effects are all consistent with the provisions of the management program.

d. Any additional information required under the State management program.

Formal review of EPA's consistency certification begins at the time the State agency receives a copy of the certification along with the information and data described above. The State agency must provide public notice of the proposed activity in accordance with State Law. At a minimum, this notice must be sent to States significantly affected by the proposed activity. At the discretion of the agency, public notice may include announcement of one or more public hearings.

State agencies must notify EPA "at the earliest practicable time" whether they concur or object to the consistency certification. However, concurrence by the State is not presumed until six months passes without an agency objection. The only other time limit imposed on the State is that, if a decision has not been issued within three months, the State must notify EPA of

the status of the matter and the basis for further delay. Thus, it is clear that the CZMA regulations allow considerable delays in permit issuance, and those delays may be beyond EPA's control.

If the State agency concurs with EPA's consistency certification, EPA may issue the permit. If the State agency objects, it must describe how the proposed activity is inconsistent with specific elements of the management program, and what alternative measures would allow the permit to be issued. In the event of a State agency objection and failure to resolve the issues between the two Agencies, EPA may not issue the permit unless the Secretary of Commerce finds that the permitted activity may be Federally approved because the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. Procedures for appeals are set forth at 15 CFR Part 930, Subpart H.

Appendix B contains a list of States with approved Coastal Zone Management Programs by EPA regions.

3. The Marine Protection, Research and Sanctuaries Act

The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972, 16 U.S.C. 1431-1434 regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping including a comprehensive and continuing program of monitoring and research regarding the effect of dumping materials. The MPRSA also establishes the Marine Sanctuaries Program which is implemented by the National Oceanic and Atmospheric Administration (NOAA). MPRSA is applicable to general permits when the permit area includes proposed or designated ocean dump sites and/or marine sanctuaries.

Where proposed and designated ocean dumping sites lie within proposed general permits areas, the discharges authorized by the NPDES permit must be reviewed for consistency or inconsistency with the dump site activities. Generally, permittees entering lease blocks also containing ocean dumping activities are required to notify the EPA Regional offices directing ocean dumping activities of the movement of mobile drilling vessels or the commencement of drilling operations.

Title III of the MPRSA (Section 302(f)) requires that the Secretary of Commerce, after designation of a marine sanctuary, consult with other federal agencies, and issue necessary regulations to control any activites permitted within the boundaries of the marine sanctuary. The Secretary must certify that any permit, license, or other authorization issued pursuant to any other authority is consistent with the purpose of the marine sanctuaries program and can be carried out within its promulgated regulations. The authority of the Secretary to administer the provisions of the Act has been delegated to the Assistant Administrator for Coastal Zone Management, National Oceanic and

Atmospheric Administration (NOAA). The rules governing oil and gas activity within a designated sanctuary are specific to each designation and are published in the Federal Register at the time sanctuaries are designated.

Factor 5 of the 403(c) guidelines specifically requires the identification of marine sanctuaries and an assessment of the impact of the proposed permit on the resources of the sanctuary. NOAA's Office of Coastal Zone Management, Marine Sanctuaries Program, receives notice of the Agency's intent to develop a general permit and is requested to identify both proposed and designated marine sanctuaries within the permit area, as well as corresponding marine resources and NOAA regulations which may be affected by the permit decision.

4. Economic Impact (Executive Order 12291)

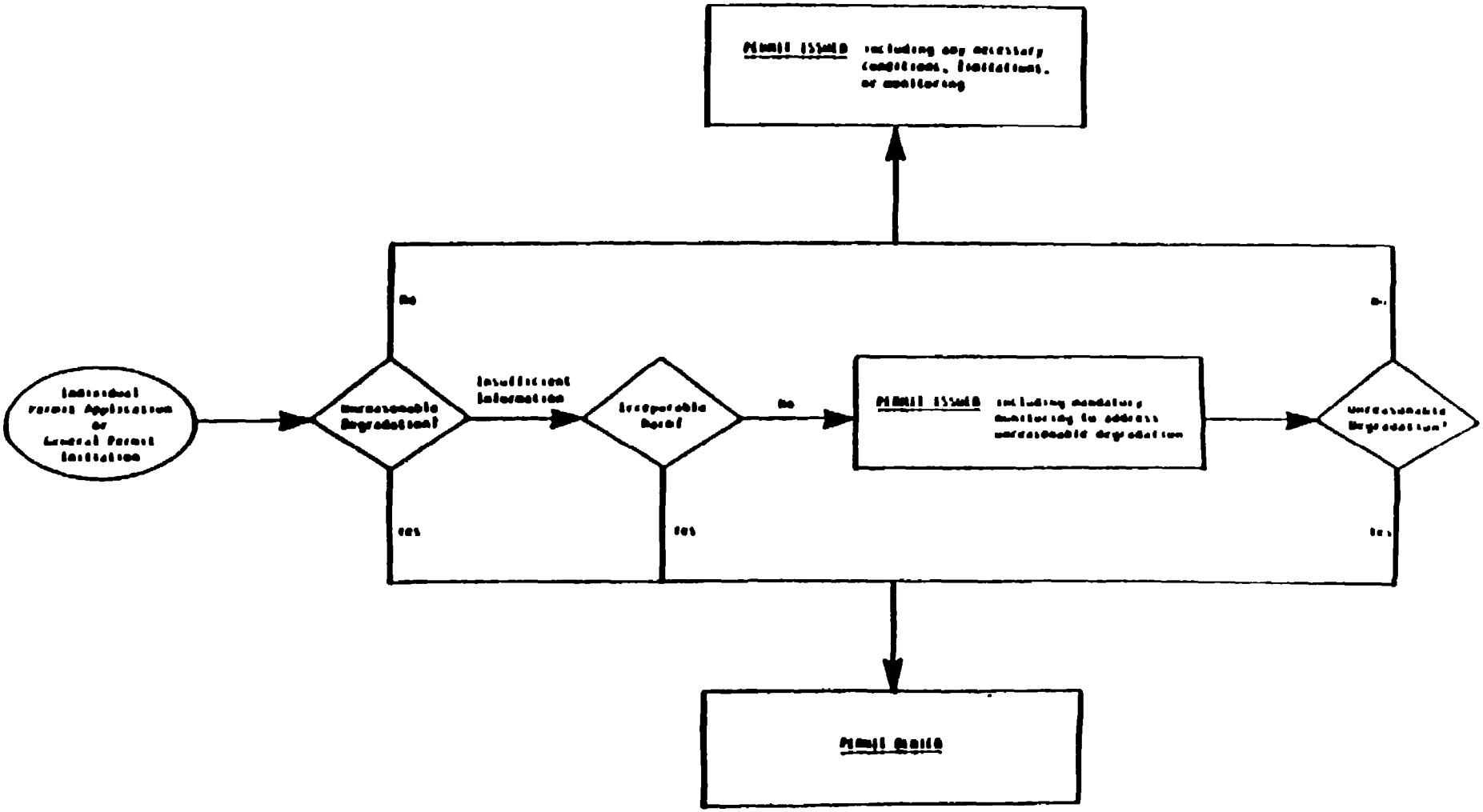
The Office of Management and Budget (OMB) has exempted general NPDES permits from the review requirments of Executive Order 12291 pursuant to Section 8b of that order. Under the exemption the Director of OMB retains discretionary authority to request that a particular general permit be submitted for review. The Director may also, at any time, withdraw the exemption.

5. Paperwork Reduction Act (PRA)

In general, the information collection requirements of general NPDES permits have been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act. Should a general permit contain new monitoring and/or reporting requirements not approved by OMB, the permit is submitted to OMB for review under the PRA during the public comment period.

6. Regulatory Flexibility Act (Reg. Flex.)

Because general NPDES permits are considered rulemakings under the APA, they are subject to the Reg. Flex Act. Under this Act, a Federal Agency must scrutinize the impact of any rulemaking on small business. General NPDES permits for Offshore Oil and Gas activities are generally found to have no impact on a significant number of small entities because cost of operations on the OCS prohibits small business from entering the market. EPA has concluded, in recently issued general permits, that no small business would be affected by the general permits.


Individual Permit Application or General Permit Initiation
Unreasonable Degradation?
Insufficient Information
Irreparable Harm?
no
yes
PERMIT ISSUED including mandatory monitoring to address unreasonable degradation
Unreasonable Degradation?
PERMIT DENIED

APPENDIX B

STATES WITH APPROVED COASTAL ZONE MANAGEMENT PLANS

LISTED BY EPA REGION AS OF JANUARY 6, 1984

REGION	STATE	COMMENTS
I	Connecticut	
	Maine	
	Massachusetts	
	New Hampshire	Ocean, Bay Segment 1985
	Rhode Island	
II	New Jersey	
	New York	
	Puerto Rico	
	Virgin Islands	
III	Delaware	
	Maryland	
	Pennsylvania	
	Virginia	1984 [in development]
IV	Alabama	
	Florida	
	Mississippi	
	North Carolina	
	South Carolina	
VI	Louisiana	
IX	California	
	Hawaii	
X	Alaska	
	Oregon	
	Washington	

APPENDIX D

Non-Oil and Gas General Permits
9/8/87

CATEGORY	PROPOSAL	FINAL	LIMITS	403(c)
Region I				
Non-contact cooling water and uncontaminated storm water	08/16/83 48 FR 37071	06/15/84 49 FR 24785	BPJ/Water Quality	Yes
Region II				
Navy weapons training (Vieques)	06/24/81 46 FR 32669	10/30/84 49 FR 43585	BPJ/Water Quality	Yes
Sanitary & domestic wastes (PR)	04/08/85 50 FR 13871	10/02/85 50 FR 40228	BPJ/Water Quality	Yes
Region VI				
Petroleum storage, transfer & marketing	09/13/83 48 FR 41084	07/12/84 49 FR 28446	BPJ/Settlement Agmt	
Correction notice		02/21/85 50 FR 7216		
Hydrostatic testing	09/13/83 48 FR 41084	--		
Private domestic discharges (LA)	07/29/87 52 FR 28337		BPJ/Water Quality	
Region VIII				
Construction activities (UT)	05/20/83 48 FR 22791	12/20/83 48 FR 56268	BPJ/Water Quality	
Construction activities (SD)	05/20/83 48 FR 22791	10/19/84 49 FR 41104	BPJ/Water Quality	

CATEGORY	PROPOSAL	FINAL	LIMITS	403(c)
Region VIII continued				
Feedlots (UT)	08/04/81 46 FR 39670	04/28/83 48 FR 19201	Pt. 412	
Feedlots (SD)	05/22/81 46 FR 28008	07/29/82 47 FR 28127	Pt. 412	
Region IX				
Feedlots (AZ)	07/18/84 49 FR 29141	10/16/84 49 FR 40441	Pt. 412	
Deep seabed mining	08/29/83 48 FR 39144	10/05/84 49 FR 39442	BPJ/Water Quality	Yes
Region X				
Log transfer facilities	02/23/84 49 FR 6788	--	BPJ/Water Quality	Yes
Seafood processors	12/17/83 48 FR 56107	06/18/84 49 FR	BPT/BCT/Water Quality	Yes
Conc. animal feeding operations (ID)	05/09/86 51 FR 17236	04/14/87 52 FR 12052	Pt. 412/BMP	
Extension comment period	06/13/86 51 FR 21617 08/14/86 51 FR 29156			

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rev:9/8/87

OCS Oil and Gas

REGION IV & VI	SALE #	DRAFT PROPOSAL	HEARING/ EXPIRATION DATES	FINAL PERMIT ISSUANCE	EFFECTIVE/ EXPIRATION DATES	LIMITS	403(c)
o Gulf of Mexico (exp, dev & prod)	All new & previous	07/26/85 50 FR 30564	08/27-29/85 09/04-06/85 10/07/85	07/09/86 51 FR 24897	07/02/86 07/01/91	BPJ/BAT BCT	yes DisRateLim
	extension of comment period	10/08/85 50 FR 41020	NONE 11/06/85				
	toxicity suspension notice, errata sheet			09/18/86 51 FR 33130	08/29/86 12/31/86		yes short term
	Thermal Dynamics notice	03/31/87 52 FR 10263	NONE 04/30/87				
	DPMP extension			07/06/87 52 FR 25303	07/02/87 09/30/87		
	ATR explanation			07/13/87 52 FR 26181	NONE		
o Inland Tidal Waters		12/27/83 48 FR 57001				BPT Part 435	
o Reissued OCS		04/04/83 48 FR		09/15/83 48 FR 4194	10/17/83 06/30/85	BPT Part 435	
o OCS	Federal Waters Texas & Louisiana	08/15/80		04/03/81 46 FR 20284	04/28/81 04/30/83		

OCS Oil and Gas 9-04-87

REGION IX	SALE #	DRAFT PROPOSAL	HEARING/ EXPIRATION DATES	FINAL PERMIT ISSUANCE	EFFECTIVE/ EXPIRATION DATES	LIMITS	403(c)
o So Cal (exp)	35,48,53,68,73 80,1966,1968	08/22/85 50 FR 34036	09/26/85 10/07/85			BPJ/BAT BCT	yes DisRatLim
o So Cal (dev & prod)	35,48,53,68,73 80,1966,1968	08/22/85 50 FR 34052	09/26/85 10/07/85			BPJ/BAT BCT	yes DisRatLim
extension of comment period		09/19/85 50 FR 38029	10/22/85 11/15/85				
o Reissue So Cal		06/21/83 48 FR 28394		12/03/83 48 FR 55029	12/03/83 06/30/84	BPT Part 435	yes
o Modification So Cal		06/21/83 48 FR 28394		12/03/83 48 FR 55029	12/03/83 06/30/84	BPT Part 435	yes yes
o So Cal OCS		09/14/81 46 FR 45672		02/18/82 47 FR 7313	12/31/83	BPT Part 435	yes yes

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REGION X	SALE #	DRAFT PROPOSAL	HEARING/ EXPIRATION DATES	FINAL PERMIT ISSUANCE	EFFECTIVE/ EXPIRATION DATES	LIMITS	403(c)
o Beaufort Sea (exp)	71, 87 AK - 36,39, 43, 43A, BF	03/14/84 49 FR 9610	04/16/84 04/18/84	06/07/84 49 FR 23734	05/30/84 05/29/89	BPJ/BAT BCT	yes
o Bering Sea (exp)	70, 83	03/14/84 49 FR 9610	04/16/84 04/16/84	06/07/84 49 FR 23734	05/30/84 05/29/89	BPJ/BAT BCT	yes
response to 5th Circuit remand		08/19/85 51 FR 29600	none 09/19/86	09/ /87 52 FR		No diesel discharge	
o Norton Sound (exp)	57	02/15/85 50 FR 6385	none 08/19/85	06/04/85 50 FR 23578	06/04/85 05/29/90	BPJ/BAT BCT	yes
o Cook Inlet (exp, dev & prod)	55, 60 AK- any	07/17/85 50 FR 28974	none 08/19/85	10/03/86 51 FR 35460	10/10/86 10/10/91	BPJ/BAT BCT/SWQS	yes
extension of comment period		09/03/85 50 FR 35598	none 08/18/85				
extension of comment period		10/07/85 50 FR 40893	none 11/18/85				
o Bering Sea II St. George Basin (exp)	89	07/22/85 50 FR 29928	none 08/19/85	See Withdrawal		BPJ/BAT BCT	yes ABCs
extension of comment period		09/03/85 50 FR 35598	none 09/18/85				
extension of comment period		10/07/85 50 FR 40893	none 11/18/85				
withdrawal		07/08/86 51 FR 24745	none				
o Beaufort Sea (exp)	97	09/ /87 52 FR	/ /87 / /87	53 FR	/ / / /	BPJ/BAT BCT	yes

ATTACHMENT A

NPDES Attorney General's Statement for General Permits

I hereby certify, pursuant to Section 402(b) of the Clean Water Act as amended (33 U.S.C. §1251, et. seq.) and 40 CFR §123.25(c) that in my opinion the laws of the State (Commonwealth) of _____ provide adequate legal authority to issue and enforce general permits in accordance with the general permit program outlined in 40 CFR §122.28. The specific authorities provided, which are contained in lawfully enacted or promulgated statutes or regulation in full force and effect on the date of this statement, include the following:

1. Authority to Issue General Permits

   State law provides authority to issue general permits for the discharge of pollutants from specified categories of point sources to the same extent as required under the general permit program administered by the U.S. Environmental Protection Agency ("EPA") pursuant to Section 402 of the Clean Water Act, as amended, 33 U.S.C. §1251 et. seq., and 40 CFR §122.28.

   (a) Federal Authority: CWA §402(a), 40 CFR §122.28, §123.25.

   (b) State Statutory Authority:

   (c) State Regulatory Authority:

   (d) Remarks of the Attorney General:

   (e) Judicial Decisions Demonstrating Adequate Authority:

2. Authority to Enforce General Permits

State law grants to the STATE NPDES PERMITTING AUTHORITY the authority to enforce general permits pursuant to the implementation of a general permit program under 40 CFR §122.28.

(a) Federal Authority: CWA §402(a), 40 CFR §122.28, §123.23 §123.27.

(b) State Statutory Authority:

(c) State Regulatory Authority:

(d) Remarks of the Attorney General:

(e) Judicial Decisions Demonstrating Adequate Authority:

APPENDIX F

Model MOA
General Permits

AMENDMENT
TO THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN
(State Agency)
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION ____

The Memorandum of Agreement between the United States Environmental Protection Agency, Region ____ (hereafter EPA) and the (State Agency) (hereafter ____) is hereby amended to include (State Agency) and EPA responsibilities for the development, issuance and enforcement of National Pollutant Discharge Elimination System (hereafter NPDES) general permits as follows:

The (State Agency) has the responsibility for developing and issuing NPDES general permits. After identifying dischargers appropriately regulated by a general permit, the (State Agency) will collect sufficient effluent data to develop effluent limitations and prepare the draft general permit.

Each draft general permit will be transmitted to the following EPA offices:

Water Management Division Director
U.S. EPA, Region ____
(Address)

Director, Office Water Enforcement and Permits*
U.S. EPA (EN-335)
401 M Street SW
Washington D.C. 20460

EPA will have up to ninety (90) days to review draft general permits and provide comments, recommendations and objections to the (State Agency). Each draft general permit will be accompanied by a fact sheet setting forth the principal facts and methodologies considered during permit development. In the event EPA does object to a general permit it will provide, in writing, the reasons for its objection and the actions necessary to eliminate the objection. The State had the right to a public hearing on the objection. Upon receipt

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* General permits for discharges from separate storm sewers need not be sent to EPA Headquarters for review.

of EPA's objection, the State may request a public hearing. If EPA's concerns are not satisfied and the State has not sought a hearing within 90 days of the objection, exclusive authority to issue the general permit passes to EPA.

If EPA raises no objections to a general permit it will be publicly noticed in accordance with (insert State requirements), and 40 C.F.R. §124.10, including publication in a daily or weekly newspaper circulated in the area to be covered by the permit. The (State Agency) will issue general permits in accordance with (insert citations to State regulations) and 40 C.F.R. §122.28.

The (State Agency) may require any person authorized by a general permit to apply for, and obtain an individual NPDES permit. In addition, interested persons, including dischargers otherwise authorized by a general permit, may request that a facility be excluded from general permit coverage. Dischargers wishing exclusion must apply for an individual NPDES permit within ninety (90) days of publication of the general permit. The applicability of a general permit will automatically terminate upon the effective date of the individual permit. Finally, a discharger with an effective or continued individual NPDES permit may seek general permit coverage by requesting its permit to be revoked.

The (State Agency) also has the primary responsibility for conducting compliance monitoring activities and enforcing conditions and requirements of general permits.

All specific State commitments regarding the issuance and enforcement of general permits will be determined through the annual 106 workplan/SEA process.

This Amendment to the Memorandum of Agreement will be effective upon approval of the (State Agency's) general permits program application by the Administrator of EPA Region __.

FOR (State Agency):

_____ _____

Director (Date)

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

_____ _____

Regional Administrator (Date)
U.S. EPA, Region _____

APPENDIX G

FEDERAL GENERAL PERMIT REGULATIONS -- CITATIONS

Topic	Reg. Cite
Definitions	§122.2
Substantive Regs. Coverage Administration Offshore Oil & Gas	§122.28
Applications	§124.3(a)(1)
Draft Permits	§124.6(c)
Fact Sheets	§124.8(a)
Public Notice	§124.10(c)(1) .10(c)(2)(i) .10(d)(1)(ii-iii) .10(d)(1)(vii)
EPA Review State Permits	§123.24(d)(3) .43(b) .44(a)(2) .44(b)(2) .44(i)
Individual Permits	§124.52(a)
Special Procedures for EPA Permits	§124.58
Evidentiary Hearings	§124.71(a)
Attorney General Statement for State Program Approval	§123.23(c)

APPENDIX H

Standard Industrial Category Codes for General Permits

Code (GPCT)	Description (GPCD)
01	Agricultural Production Livestock
04	Coal Mining
07	Construction
10	Deep Seabed Mining
13	Fish Hatcheries and Preserves
16	Landfill Runoff
19	Laundry, Cleaning, and Garment Services
22	Meat Products
25	Non-Contact Cooling Waters
28	Offshore Oil and gas
31	Oil and gas Extraction
34	Petroleum and Bulk Stations and Terminals
37	Placer Mining
40	Private Households
43	Processed Fruits and vegetables
46	Salt Extraction
49	Sand and Gravel
50	Sand and Gravel
52	Seafood Processing
55	Sewerage Systems (commercial)
58	Sewerage Systems (municipal)
61	Storm Water Runoff
64	Water Supply
67	Hydrostatic Testing
70	Log Transfer
99	Not Yet Defined