

Dated: October 9, 2003.

Christopher Knopes,

Associate Director, Office of Environmental Policy Innovation.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-7580-8]

Public Notice of Draft NPDES General Permits for Wastewater Lagoon Systems Located In Indian Country in MT, ND, SD, UT, and WY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to reissue NPDES general permits.

SUMMARY: EPA Region 8 is hereby giving notice of its proposed determination to issue five National Pollutant Discharge Elimination System (NPDES) general permits for wastewater lagoon systems that are located in Indian country in the States of MT, ND, SD, UT, and WY and that are treating primarily domestic wastewater. The general permits are grouped geographically by State, with the permit coverage being for specified Indian reservations in the State; any land held in trust by the United States for an Indian tribe; and any other areas which are Indian country within the meaning of 18 U.S.C. 1151. These general permits will replace the twenty-one general permits that were issued for a 5-year term in 1998 for Indian reservations in MT, ND, SD, and UT.

The use of wastewater lagoon systems is the most common method of treating municipal wastewater in Indian country in MT, ND, SD, UT and WY. Wastewater lagoon systems are also used to treat domestic wastewater from isolated housing developments, schools, camps, missions, and similar sources of domestic wastewater that are not connected to a municipal sanitary sewer system and do not use septic tank systems. Region 8 is proposing to use general permits instead of individual permits for permitting the discharges from such facilities in order to reduce the Region's administrative burden of issuing separate individual permits. The administrative burden for the regulated sources is expected to be about the same under the general permits as with individual permits, but it will be much quicker to obtain permit coverage with general permits than with individual permits. The discharge requirements would essentially be the same with an individual permit or under the general permit.

DATES: Public comments on this proposal must be received, in writing, on or before December 30, 2003.

ADDRESSES: Public comments should be sent to: U.S. EPA, Region 8; Water Permits Unit (8P-W-P); 999 18th Street, Suite 300; Denver, CO 80202-2466.

FOR FURTHER INFORMATION CONTACT: For a copy of the draft permit and Fact Sheet, please write William Kennedy at the above address or telephone (303) 312-6285. Copies of the draft permit and Fact Sheet may also be downloaded from the EPA Region 8 web page at <http://www.epa.gov/region08/html/npdes/lagoons.html>. Questions regarding the specific permit requirements may be directed to Mike Reed at (303) 312-6132, or E-mail address Reed.Mike@epa.gov.

SUPPLEMENTARY INFORMATION It is proposed that general permits be issued for discharges from wastewater lagoon systems located in the following areas:

Montana: MTG589###. This permit covers the Blackfeet Indian Reservation; the Crow Indian Reservation; the Flathead Indian Reservation; the Fort Belknap Indian Reservation; the Fort Peck Indian Reservation; the Northern Cheyenne Indian Reservation; the Rocky Boy's Indian Reservation; any land within the State of Montana held in trust by the United States for an Indian tribe; and any other areas within the State of Montana which are Indian country within the meaning of 18 U.S.C. 1151.

North Dakota: NDG589###. This permit covers the Fort Berthold Indian Reservation; the Fort Totten Indian Reservation—also known as Spirit Lake Indian Reservation; the Standing Rock Sioux Indian Reservation; the Turtle Mountain Indian Reservation; any land within the State of North Dakota held in trust by the United States for an Indian tribe; and any other areas within the State of North Dakota which are Indian country within the meaning of 18 U.S.C. 1151. This permit includes that portion of the Standing Rock Indian Reservation and associated Indian country located within the State of South Dakota. It does not include any land held in trust by the United States for the Sisseton-Wahpeton Sioux Tribe or any other Indian country associated with that Tribe, which is covered under general permit SDG589###.

South Dakota: SDG589###. This permit covers the Cheyenne River Sioux Indian Reservation; Crow Creek Sioux Indian Reservation; the Flandreau Indian Reservation; the Lower Brule Indian Reservation; the Pine Ridge Indian Reservation—includes the entire Reservation, which is located in both

South Dakota and Nebraska; the Rosebud Sioux Indian Reservation; the Yankton Sioux Indian Reservation; any land within the State of South Dakota held in trust by the United States for an Indian tribe; and any other areas, within the State of South Dakota which are Indian country within the meaning of 18 U.S.C. 1151. This permit includes any land in the State of North Dakota that is held in trust by the United States for the Sisseton-Wahpeton Sioux Tribe or any other Indian country associated with that Tribe. It does not include the Standing Rock Indian Reservation or any associated Indian country, which is covered under general permit NDG589###.

Utah: UTG589###. This permit covers the Northwestern Band of Shoshoni Indian Reservation; the Paiute Indian Reservation; the Skull Valley Indian Reservation; the Uintah and Ouray Indian Reservation; any land within the State of Utah held in trust by the United States for an Indian tribe; and any other areas within the State of Utah which are Indian country within the meaning of 18 U.S.C. 1151. It does not include those portions of the Navajo Nation, the Goshutes Indian Reservation, and the Ute Mountain Indian Reservation located in the State of Utah, any land held in trust by the United States for an Indian tribe that is associated with those reservations, and any other areas which are Indian country within the meaning of 18 U.S.C. 1151 that are associated with those reservations.

Wyoming: WYG589###. This permit covers the Wind River Indian Reservation; any land within the State of Wyoming held in trust by the United States for an Indian tribe; and any other areas within the State of Wyoming which are Indian country within the meaning of 18 U.S.C. 1151.

General permits are not being issued for the portions of the Navajo Nation and the Goshutes Indian Reservation in Utah since the permitting activities for these reservations are done by Region 9 of EPA. Also, general permits are not being issued for the Southern Ute Indian Reservation located in the State of Colorado and the Ute Mountain Indian Reservation located in the States of Colorado, New Mexico, and Utah because of water quality concerns in the San Juan River Basin portion of the Colorado River Basin.

Coverage under the general permits will be limited to lagoon systems treating primarily domestic wastewater and will include the following three categories: (1) Lagoons where no permission is required before starting to discharge; (2) lagoons where permission is required before starting to discharge;

and (3) lagoons that are required to have no discharge. The effluent limitations for lagoons coming under categories 1 and 2 are based on the Federal Secondary Treatment Regulation (40 CFR part 133) and best professional judgment (BPJ). There are provisions in the general permits for adjusting the effluent limitations on total suspended solids (TSS) and pH in accordance with the provisions of the Secondary Treatment Regulation. If more stringent and/or additional effluent limitations are considered necessary to comply with applicable water quality standards, etc., those limitations may be imposed by written notification to the permittee. Lagoon systems under category 3 are required to have no discharge except in accordance with the bypass provisions of the permit. Self-monitoring requirements and routine inspection requirements are included in the permits. The permits do not authorize the discharge of wastewater from land application sites, but they do require that the land application of wastewater from the lagoon systems be done in accordance with a written operational plan for the land application of the wastewater. The objectives of the operational plan are to minimize the potential for the discharge of wastewater from the land application site and to avoid applying excessive amounts of nitrogen to the land application site.

With the exception of the Flathead Indian Reservation and the Fort Peck Indian Reservation, where the Tribes have Clean Water Act section 401(a)(1) certification authority, EPA intends to certify that the permits comply with the applicable provisions of the Clean Water Act as long as the permittees comply with all permit conditions. The permits will be issued for a period of five years, with the permit effective date and expiration date determined at the time of issuance.

Paperwork Reduction Act

The information collection requirements of these permits were previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, 40 U.S.C. 3501, *et seq.* and assigned OMB control numbers 2040-0250 (General Permits) and 2040-0004 (Discharge Monitoring Reports).

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant

regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has waived review of NPDES general permits under the terms of Executive Order 12866.

Regulatory Flexibility Act

Issuance of an NPDES general permit is not subject to rulemaking requirements, including the requirement for a general notice of proposed rulemaking, under section 553 of the Administrative Procedures Act (APA) or any other law, and is, thus, not subject to the Regulatory Flexibility Act (RFA) requirement to prepare an Initial Regulatory Flex Analysis (IRFA).

The APA defines two broad, mutually exclusive categories of agency action—"rules" and "orders." Its definition of "rule" encompasses "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *." APA section 551(4). Its definition of "order" is residual: "a final disposition * * * of an agency in a matter other than rulemaking but including licensing." APA section 551(6) (emphasis added). The APA defines "license" to "include * * * an agency permit * * *." APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes "rulemaking" requirements. The APA defines "rulemaking" as "the agency process for formulating, amending, or repealing a rule." (APA section 551(5)). By its terms, then, section 553 applies only to "rules" and not also to "orders," which include permits.

Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104-4, generally requires Federal agencies to assess the effects of their

"regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, e.g., UMRA section 201, "Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to 2 U.S.C. 658 which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law. * * *"

As discussed in the RFA section of this notice, NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: October 24, 2003.

Stephen S. Tuber,

Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance.

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FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

October 7, 2003.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with