

Dated: October 1, 2008.

Robert J. Meyers,

*Principal Deputy Assistant Administrator,
Office of Air and Radiation.*

[FR Doc. E8-23682 Filed 10-6-08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-8726-4]

Cross-Media Electronic Reporting Rule State Authorized/Approved Program Modification/Revision Approval: State of Oklahoma

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice.

SUMMARY: This action announces EPA's approval, under regulations for Cross-Media Electronic Reporting, of the State of Oklahoma's request for modifications/revisions to their authorized programs to allow electronic reporting for certain of their authorized programs under title 40 and specific reports.

DATES: EPA's approval is effective October 7, 2008.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566-1697, huffer.evi@epa.gov, or David Schwarz, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566-1704, schwarz.david@epa.gov.

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as Part 3 of Title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribe, or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and get EPA approval. Subpart D also provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government

will use to implement the electronic reporting. Additionally, in § 3.1000 (b) through (e) of 40 CFR Part 3, Subpart D provides for special procedures for program revisions and modifications that provide for electronic reporting, to be used at the option of the state, tribe, or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the Subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting component of its authorized programs covered by the application and will use electronic document receiving systems that meet the applicable Subpart D requirements.

On September 7, 2007, the State of Oklahoma Department of Environmental Quality (OKDEQ) submitted a consolidated application for their Electronic Document Receiving System (ERDS) addressing revisions or modifications to multiple authorized/approved programs under air, water, and waste.

EPA has reviewed OKDEQ's request to revise or modify multiple authorized/approved programs and, based on this review, EPA has determined that portions of the application relating to the programs and specific reports identified in this Notice, when compared to the federal regulations, meet the standards for approval of authorized program revisions set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve OKDEQ's request for modifications/revisions to certain of their authorized programs under title 40 to allow electronic reporting for specific reports under those programs is being published in the **Federal Register**.

EPA has approved OKDEQ's request for modifications/revisions to following of their authorized programs to allow electronic reporting for the specified reports:

- **Program:** Part 60 Standards of Performance for New Stationary Sources; **Reports:** New Source Performance Standards Reports under § 60.7, and Continuous Emissions Monitors/Continuous Opacity Monitors under § 60.7(c) and (d);
- **Program:** Part 61 National Emission Standards For Hazardous Air Pollutants (NESHAP); **Report:** NESHAP Reports Notification of Start Up under § 61.09;
- **Program:** Part 63 NESHAP for Source Categories; **Reports:** Continuous Emissions Monitors/Continuous Opacity Monitors under § 63.10(e)(3),

and Maximum Achievable Control Technology Reports under § 63.9;

- **Program:** Part 70 State Operating Permit Programs; **Reports:** Annual Compliance Certifications under § 70.6, and Semi-Annual Monitoring and Deviation Reports (SAR) under § 70.6;

- **Program:** Part 122 EPA Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES); **Reports:** Stormwater Notice of Intent/Notice of Termination under § 122.26, and Wastewater Daily Monitoring Reports (NPDES) under § 122.41;

- **Programs:** Parts 144 through 148 Underground Injection Control (UIC) Program, State UIC Program Requirements, UIC Program: Criteria and Standards, State UIC Programs, and Hazardous Waste Injection Restrictions; **Report:** UIC Permit Applications;

- **Program:** Part 261 Identification And Listing Of Hazardous Waste; **Report:** Regulated Waste Activity Notification;

- **Program:** Part 270 EPA Administered Permit Programs: The Hazardous Waste Permit Program; **Report:** EPA Hazardous Waste Permit Application Part A Form (EPA Form 8700-23).

OKDEQ was notified of EPA's determination to approve its application relating to the authorized programs and specific reports listed above in a letter dated September 26, 2008.

Dated: September 26, 2008.

Molly A. O'Neill,

*Assistant Administrator and Chief
Information Officer.*

[FR Doc. E8-23693 Filed 10-6-08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-8725-6]

Notice of Availability of Final NPDES General Permits MAG07000 and NHG07000 for Discharges From Dewatering Activities in the Commonwealth of Massachusetts (Including Both Commonwealth and Indian Country Lands) and the State of New Hampshire: the Dewatering General Permit (DGP)

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice of availability of Final NPDES General Permits MAG07000 and NHG07000.

SUMMARY: The Director of the Office of Ecosystem Protection, EPA-New England, is providing a notice of

availability of the final National Pollutant Discharge Elimination System (NPDES) general permits for dewatering activity discharges to certain waters of the Commonwealth of Massachusetts (including both Commonwealth and Indian country lands) and the State of New Hampshire. These General Permits replace the Construction Dewatering General Permits, which expired on September 23, 2007. The notice of availability of the draft NPDES general permits for dewatering activity discharges was published in the **Federal Register** on July 21, 2008 and the public notice period ran from July 22, 2008 to August 21, 2008. In addition to comments on the draft general permits, EPA also requested comments on the cost associated with a limit for total residual chlorine (TRC) for discharges containing potable water. No comments were received during the public notice period regarding either the draft permits or the cost associated with a TRC limit for discharges containing potable water.

The final General Permits establish Notice of Intent (NOI) requirements, effluent limitations, standards, prohibitions, and management practices for facilities with construction dewatering of groundwater intrusion and/or storm water accumulation from sites less than one acre and short-term and long-term dewatering of foundation sumps. Based on inter-governmental agency review, the following changes have been made from the draft permit:

- Appendix III was updated to include the most recent information regarding federally-listed threatened and endangered species and the process by which permittees determine if the Endangered Species Act criteria are met.
- Coverage for and references to discharges originating from flushing of potable water lines and pump testing of water wells were removed from the General Permit. Facilities with these types of discharges retain the ability to apply for coverage under an individual permit.

Owners and/or operators of facilities with dewatering discharges, including those currently authorized to discharge under the expired General Permits, will be required to submit an NOI to be covered by the General Permit to both EPA-New England and the appropriate state agency. After EPA and the State have reviewed the NOI, the facility will receive a written notification from EPA of permit coverage and authorization to discharge under the General Permit. The eligibility requirements for coverage under the general permits are discussed in detail under Part 3 of the permit. The reader is strongly urged to go to that section to determine eligibility. An

individual permit may be necessary if the discharger cannot meet the terms and conditions or eligibility requirements in the permit.

DATES: The general permits shall be effective on the date of signature and will expire at midnight, five (5) years from the last day of the month preceding the effective date.

ADDRESSES: The required notification information to obtain permit coverage is provided in the general permits. This information shall be submitted to both EPA and the appropriate state. Notification information may be sent via USPS or e-mail to EPA at EPA-Region 1, Office of Ecosystem Protection, CIP, 1 Congress Street, Suite 1100, Boston, Massachusetts 02114-2023 or e-mail address

GeneralPermit.Dewatering@epa.gov.

Notification information shall be submitted to the appropriate State agency at the addresses listed in Appendix V of the General Permits.

FURTHER INFORMATION CONTACT:

Additional information concerning the final General Permits may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday, excluding holidays, from Sara Green at *Green.Sara@EPA.GOV* or (617) 918-1574. The general permits may be viewed over the Internet at the EPA web site <http://www.epa.gov/region1/npdes/dewatering.html>. To obtain a paper copy of the general permits, please contact Ms. Green using the contact information provided above. A reasonable fee may be charged for copying requests.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The legal question of whether a general permit (as opposed to an individual permit) qualifies as a "rule" or as an "adjudication" under the Administrative Procedure Act (APA) has been the subject of periodic litigation. In a recent case, the court held that the Clean Water Act (CWA) Section 404 Nationwide general permit before the court did qualify as a "rule" and therefore that the issuance of the general permit needed to comply with

the applicable legal requirements for the issuance of a "rule." *National Ass'n of Home Builders v. U.S. Army Corps of Engineers*, 417 F.3d 1272, 1284-85 (DC Cir.2005) (Army Corps general permits under Section 404 of the Clean Water Act are rules under the APA and the Regulatory Flexibility Act; "Each NWP [nationwide permit] easily fits within the APA's definition of a 'rule.' * * * As such, each NWP constitutes a rule * * *").

As EPA stated in 1998, "the Agency recognizes that the question of the applicability of the APA, and thus the RFA, to the issuance of a general permit is a difficult one, given the fact that a large number of dischargers may choose to use the general permit." 63 FR 36489, 36497 (July 6, 1998). At that time, EPA "reviewed its previous NPDES general permitting actions and related statements in the **Federal Register** or elsewhere," and stated that "[t]his review suggests that the Agency has generally treated NPDES general permits effectively as rules, though at times it has given contrary indications as to whether these actions are rules or permits." *Id.* at 36496. Based on EPA's further legal analysis of the issue, the Agency "concluded, as set forth in the proposal, that NPDES general permits are permits [i.e., adjudications] under the APA and thus not subject to APA rulemaking requirements or the RFA." *Id.* Accordingly, the Agency stated that "the APA's rulemaking requirements are inapplicable to issuance of such permits," and thus "NPDES permitting is not subject to the requirement to publish a general notice of proposed rulemaking under the APA or any other law * * * [and] it is not subject to the RFA." *Id.* at 36497.

However, the Agency went on to explain that, even though EPA had concluded that it was not legally required to do so, the Agency would voluntarily perform the RFA's small-entity impact analysis. *Id.* EPA explained the strong public interest in the Agency following the RFA's requirements on a voluntary basis: "[The notice and comment] process also provides an opportunity for EPA to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities." *Id.* Accordingly, with respect to the NPDES permit that EPA was addressing in that **Federal Register** notice, EPA stated that "the Agency has considered and addressed the potential impact of the general permit on small entities in a manner that would meet the requirements of the RFA if it applied." *Id.*

Subsequent to EPA's conclusion in 1998 that general permits are adjudications, rather than rules, as noted above, the DC Circuit recently held that Nationwide general permits under section 404 are "rules" rather than "adjudications." Thus, this legal question remains "a difficult one" (*supra*). However, EPA continues to believe that there is a strong public policy interest in EPA applying the RFA's framework and requirements to the Agency's evaluation and consideration of the nature and extent of any economic impacts that a CWA general permit could have on small entities (e.g., small businesses). In this regard, EPA believes that the Agency's evaluation of the potential economic impact that a general permit would have on small entities, consistent with the RFA framework discussed below, is relevant to, and an essential component of, the Agency's assessment of whether a CWA general permit would place requirements on dischargers that are appropriate and reasonable. Furthermore, EPA believes that the RFA's framework and requirements provide the Agency with the best approach for the Agency's evaluation of the economic impact of general permits on small entities. While using the RFA framework to inform its assessment of whether permit requirements are appropriate and reasonable, EPA will also continue to ensure that all permits satisfy the requirements of the Clean Water Act. Accordingly, EPA has committed to operating in accordance with the RFA's framework and requirements during the Agency's issuance of CWA general permits (in other words, the Agency has committed that it will apply the RFA in its issuance of general permits as if those permits do qualify as "rules" that are subject to the RFA).

EPA anticipates that for most general permits the Agency will be able to conclude that there is not a significant economic impact on a substantial number of small entities. In such cases, the requirements of the RFA framework are fulfilled by including a statement to this effect in the permit fact sheet, along with a statement providing the factual basis for the conclusion. A quantitative analysis of impacts would only be required for permits that may affect a substantial number of small entities, consistent with EPA guidance regarding RFA certification.¹

Consistent with the above discussion, EPA has concluded that the issuance of the 2008 DGP would not affect a substantial number of small entities. An estimated 36 construction projects per year were authorized under the 2002 General Permits, a substantial number of which were not operated by small entities. The 2008 DGP includes expanded coverage for additional types of discharges; however, these discharges are temporary in nature. At any one time, fewer than 100 small entities are expected to be discharging and incurring costs. In addition, requirements in the 2008 DGP remain substantially similar to those in the 2002 General Permit, except for the addition of total residual chlorine (TRC) limits for discharges from municipal sources. Therefore, EPA has concluded that the issuance of the 2008 DGP is unlikely to have an adverse economic impact on small entities.

Dated: September 30, 2008.

Robert W. Varney,

Regional Administrator, Region 1.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-8725-7]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held October 21-23, 2008 at The Churchill Hotel, Washington, DC. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: The CHPAC will meet on Tuesday, October 21, Wednesday, October 22, and Thursday, October 23, 2008 at The Churchill Hotel.

ADDRESSES: The Churchill Hotel, 1914 Connecticut Ave NW., Washington DC 20009, Suite 275.

rfafinalguidance06.pdf. After considering the Guidance and the purpose of CWA general permits, EPA concludes that general permits affecting less than 100 small entities do not have a significant economic impact on a substantial number of small entities.

FOR FURTHER INFORMATION CONTACT:

Carolyn Hubbard, Child and Aging Health Protection Division, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564-2189, hubbard.carolyn@epa.gov.

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. The CHPAC plenary will meet on Wednesday, October 22 from 8:30 a.m. to 5 p.m., and Thursday, October 23, from 8:30 a.m. to 12:30 p.m. The Task Groups will meet Tuesday, October 21, from 1 p.m. to 5 p.m. Agenda items include a discussion of chemicals management policy, a presentation about the process for producing the next edition of America's Children and the Environment, and a discussion on formulating advice on children's health to the EPA Administrator following the transition.

Access and Accommodations: For information on access or services for individuals with disabilities, please contact Carolyn Hubbard at 202-564-2189 or hubbard.carolyn@epa.gov. To request accommodation of a disability, please contact Carolyn Hubbard preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 1, 2008.

Carolyn Hubbard,

Designated Federal Official.

Draft Agenda

Tuesday, October 21, 2008

1 p.m.-5 p.m. Chemicals Management Task Group Meeting.

Wednesday, October 22, 2008: CHPAC Plenary Session

8:30-9 Continental Breakfast and Gathering.

9-9:30 Welcome, Introductions, & Agenda Review.

9:30-10 Highlights of Recent EPA Activities.

10-11 Presentation on ANPR on Regulating Greenhouse Gases under the Clean Air Act.

11-11:15 Break.

11:15-12:15 Review of Chemicals Management Comment Letter.

12:15-1:15 Lunch (on your own).

1:15-2:45 Panel on America's Children and the Environment.

2:45-3:30 Revisions to Chemicals Management Comment Letter.

3:30-3:45 Break.

3:45-4 Presentation on EPA Transition process.

4-5 Public Comment.

5 Adjourn for the Day.

¹ EPA's current guidance, entitled Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement and Fairness Act, was issued in November 2006 and is available on EPA's Web site: <http://www.epa.gov/sbrefa/documents/>