

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 CWA. Accordingly, EPA has committed to operate 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).

#### *B. Application of RFA Framework to Proposed Issuance of CGP*

EPA has concluded, consistent with the discussion in Section IV.A above, that the issuance of the 2009 CGP could affect a handful of small entities. In the areas where the CGP is effective (see Section II.E), (those areas where EPA is the permit authority), a total of 27 construction projects were authorized under the 2004 CGP—some of these project could have been operated by small entities. However, EPA has concluded that the proposed issuance of the 2009 CGP is unlikely to have an adverse economic impact on small entities. The 2009 CGP includes the same requirements as those of the national 2008 CGP issued by other EPA regions. Additionally, an operator’s use of the CGP is volitional (*i.e.*, a discharger could apply for an individual permit rather than for coverage under this general permit) and, given the more streamlined process for obtaining permit coverage, is less burdensome than an individual NPDES permit. EPA intends to include an updated economic screening analysis with the issuance of the next national CGP.

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

Dated: August 17, 2009.

**James D. Giattina, Director,**

*Water Protection Division, Region 4.*

[FR Doc. E9–20595 Filed 8–25–09; 8:45 am]

**BILLING CODE 6560–50–P**

## **ENVIRONMENTAL PROTECTION AGENCY**

[EPA–HQ–OPP–2009–0008; FRL–8433–4]

### **Tribal Pesticide Program Council; Notice of Public Meeting**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Tribal Pesticide Program Council (TPPC) will hold a two-day meeting on Wednesday, October 14, 2009 and Thursday, October 15, 2009. This notice announces the location and times for the meeting and sets forth tentative agenda topics.

**DATES:** The meeting will be held on Wednesday, October 14, 2009 and Thursday, October 15, 2009 from 9 a.m. to 5 p.m.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

**ADDRESSES:** The meeting will be held in the Office of Pesticide Programs (OPP) 4th Floor South Conference Room, One Potomac Yard, 2777 S. Crystal Drive, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Mary Powell, Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7384; fax number: (703) 308–1850; e-mail address: [powell.mary@epa.gov](mailto:powell.mary@epa.gov); or Lillian Wilmore, TPPC Administrator, 1595 Beacon St. #3, Brookline, MA 02446–4617; telephone number: (617) 232–5742; fax number: (617) 277–1656; e-mail address: [NAEcology@aol.com](mailto:NAEcology@aol.com). For information about the TPPC, please see <http://www.epa.gov/oppfead1/tribes/tppc.htm>.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. Does this Action Apply to Me?*

You may be interested in this meeting if you are interested in the TPPC’s information-exchange relationship with EPA regarding important issues in Indian country related to human and environmental exposure to pesticides and insight into EPA’s decision-making process. All parties are invited and encouraged to participate as appropriate. Potentially affected entities may include, but are not limited to, those who use, or conduct testing of, chemical substances under the Federal

Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug and Cosmetic Act (FFDCA).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established a docket for this action under docket ID number EPA-HQ-OPP-2009-0008. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>.

## II. Tentative Agenda

1. Report from the new TPPC Administrator.
2. Report on the international IPM conference.
3. Presentation on the inspection needs of tribes along the Colorado River.
4. Updates from OPP and EPA's Office of Enforcement and Compliance Assurance.
5. EPA Regional reports.
6. Discussion on the use of restricted-use pesticides in Indian country.
7. Tribal Caucus (TPPC only).

## III. How Can I Request to Participate in this Meeting?

If you wish to participate in this meeting, you may submit a request to the person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered Confidential Business Information. Requests to participate in the meeting, identified by docket ID number EPA-HQ-OPP-2009-0008, must be received on or before September 8, 2009.

## List of Subjects

Environmental protection, pesticides and pests, Tribes.

Dated: August 17, 2009.

**William R. Diamond,**

*Director, Field and External Affairs Division,  
Office of Pesticide Programs.*

[FR Doc. E9-20605 Filed 8-25-09; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8949-9]

### National Emission Standards for Hazardous Air Pollutants; Announcement of EPA Letter Addressing Recent Court Decision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** On December 19, 2008, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) vacated two provisions in EPA's General Provisions Rule promulgated under section 112 of the Clean Air Act that exempt sources from the requirement to comply with otherwise applicable section 112(d) emission standards during periods of startup, shutdown and malfunction. We are announcing the public availability of a letter that EPA has issued addressing concerns that have been raised regarding the impact of that decision if the mandate effectuating the vacatur issues.

**DATES:** August 26, 2009, EPA announces the availability of EPA's letter related to a recent court decision regarding 40 CFR 63.6(f)(1) and (h)(1).

**FOR FURTHER INFORMATION CONTACT:** Mr. Charlie Garlow, U.S. EPA Office of Enforcement and Compliance Assurance, Office of Civil Enforcement, Air Enforcement Division (MAIL CODE 2242A), 1200 Pennsylvania Avenue, Washington, DC 20460, telephone number (202) 564-1088, fax number (202) 564-0068, e-mail address: [garlow.charlie@epa.gov](mailto:garlow.charlie@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA recently issued a letter, dated July 22, 2009, from Adam Kushner, Director, Office of Civil Enforcement, to various parties that addresses concerns that have been raised regarding the impact of the decision in *Sierra Club v. EPA*, 551 F.3d 1019 (DC Cir. 2008). In that decision, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) vacated 40 CFR 63.6(f)(1) and (h)(1), which are two provisions in EPA's General Provisions

Rule promulgated under section 112 of the Clean Air Act that exempt sources from the requirement to comply with otherwise applicable section 112(d) emission standards during periods of startup, shutdown and malfunction. Industry intervenors appealed the December 2008 *Sierra Club* decision by filing petitions for rehearing. On July 30, 2009, the DC Circuit denied these petitions. On August 5, 2009, EPA filed a motion seeking a 60-day stay of the mandate. On August 6, 2009, Industry Intervenor filed a motion to stay the mandate pending their appeal of the decision to the United States Supreme Court. Until the D.C. Circuit issues a mandate effectuating the vacatur, 40 CFR 63.6(f)(1) and (h)(1) remain in effect. EPA has posted a copy of the July 22, 2009 letter and a copy of the *Sierra Club* decision on the EPA Office of Enforcement and Compliance Assurance Web site at <http://www.epa.gov/compliance/civil/caa/ssm.html>. EPA has also included on the Web site a copy of relevant pleadings in the *Sierra Club* litigation. EPA intends to update this Web site as appropriate with additional information relating to the *Sierra Club* decision.

Dated: August 14, 2009.

**Cynthia Giles,**

*Assistant Administrator, Office of  
Enforcement and Compliance Assurance.*

[FR Doc. E9-20593 Filed 8-25-09; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2009-0208; FRL-8429-6]

### Maneb; Product Cancellation Order

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's order for the cancellations, voluntarily requested by the registrant and accepted by the Agency, of products containing the pesticide maneb, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a September 12, 2008 **Federal Register** Notice of Receipt of Requests from the United Phosphorous, Inc. registrant to voluntarily cancel all their maneb product registrations. These are not the last maneb products registered for use in the United States. In the September 12, 2008 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive