US EPA ARCHIVE DOCUMENT

This information is reproduced with permission from HeinOnline, under contract to EPA. By including this material, EPA does not endorse HeinOnline.

"Appeal," shall govern the availability of Bureau of the Mint records.

(b) *Determination of availability.* The Director of the Mint delegates authority to the following Mint officials to determine, in accordance with Part 1 of this title, which of the records or information requested is available, subject to the appeal provided in § 92.6: The Deputy Director of the Mint, Division Heads in the Office of the Director, and the Superintendent or Officer in Charge of the field office where the record is located.

(c) *Requests for identifiable records.* A written request for an identifiable record shall be addressed to the Director of the Mint, Washington, D.C. 20220. A request presented in person shall be made in the public reading room of the Treasury Department, 15th Street and Pennsylvania Avenue, NW, Washington, D.C., or in such other office designated by the Director of the Mint.

§ 92.6 Appeal.

Any person denied access to records requested under § 92.5 may file an appeal to the Director of the Mint within 30 days after notification of such denial. The appeal shall provide the name and address of the appellant, the identification of the record denied, and the date of the original request and its denial.

PART 93—DOMESTIC GOLD AND SILVER OPERATIONS PROCEDURES AND DESCRIPTIONS OF FORMS [REMOVED]

6. Part 93 is removed.

PART 120—PROCLAMATIONS AND EXECUTIVE ORDERS CONCERNING BANKING [REMOVED]

7. Part 120 is removed.

PART 121—MITIGATION OF FORFEITURE OF COUNTERFEIT GOLD COINS [REMOVED]

8. Part 121 is removed.

PART 122—GENERAL LICENSES ISSUED UNDER EXECUTIVE ORDER 6073, AS AMENDED [REMOVED]

9. Part 122 is removed.

PART 127—EXECUTIVE ORDER OF JANUARY 15, 1934, REGULATING TRANSACTIONS IN FOREIGN EXCHANGE, TRANSFERS OF CREDIT, AND EXPORT OF COIN AND CURRENCY [REMOVED]

10. Part 127 is removed.

Executive Order 12291

It has been determined that this proposal does not meet the criteria for "major rules", set forth in Executive Order 12291 (February 17, 1981) in that it will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects or competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because, if promulgated as a final rule, it will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to: have significant secondary or incidental effects on a substantial number of small entities; or impose or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. Accordingly, the Secretary of the Treasury has certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposal, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entitities.

Comments

Before adopting final regulations, consideration will be given to any written comments timely submitted. Comments submitted will be available for public inspection during regular business hours at the Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220.

Drafting Information

The principal authors of this document were:

John G. Murphy, Jr., Attorney/Adviser, Office of the General Counsel, Department of the Treasury, Room 2014, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220 (202) 566-8184;

Kenneth B. Gubin, Counsel, Bureau of the Mint, Room 1033, 501 13th Street, NW., Washington, D.C. 20220 (202) 376-0564.

However, personnel from other Treasury offices participated in its development.

Peter J. Wallison,

General Counsel.

[FR Doc. 82-16022 Filed 6-11-82; 8:45 am]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, and 124

[FRL-2063-4]

Consolidated Permit Regulations; Revision in Accordance with Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: On November 16, 1981, EPA entered into a settlement agreement with numerous industry petitioners in the consolidated permit regulations litigation (*NRDC* v. *EPA* and consolidated cases, No. 80-1607 (D.C. Cir., filed June 2, 1980)). This rulemaking proposes to revise certain provisions of the consolidated permit regulations in accordance with that settlement. The proposed changes are intended to minimize the regulatory burdens imposed on permittees under four permitting programs administering by EPA or approved States.

These proposed changes, and others tht we expect to make, are also intended to respond to the President's Task Force on Regulatory Relief. The Task Force has asked that the Agency review the consolidated permit regulations with the objective of enhancing efficiency and eliminating unnecessary regulatory burdens.

DATES: EPA will accept public comments on the proposed amendments until August 13, 1982. A hearing is scheduled for August 3, 1982, at the address listed below, to consider several of the proposed regulatory amendments as they apply to State Underground Injection Control (UIC) programs under the Safe Drinking Water Act (SDWA). However, EPA intends to forego this hearing if sufficient public notice is not shown.

ADDRESSES: Interested persons may participate in the rulemaking by submitting written comments to Karen Wardzinski, Office of Water Enforcement and Permits, Permits Division (EN-336), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

This information is reproduced with permission from HeinOnline, under contract to EPA. By including this material, EPA does not endorse HeinOnline.

Hearing: 401 M Street, SW., Washington, D.C. 20460, Room 3906.

FOR FURTHER INFORMATION CONTACT: Karen Wardzinski, Office of Water Enforcement and Permits, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, 202-755-0750.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 7, 1979, EPA published final regulations establishing program requirements and procedures for the National Pollutant Discharge Elimination System (NPDES) program under the Clean Water Act (CWA), 44 FR 32854. Shortly thereafter, on June 14, 1979, the effective date of these regulations for purposes of judicial review, a number of petitioners representing major industrial trade associations, several of their member companies, and the Natural Resources Defense Council (NRDC) filed petitions for review of the regulations. Some of these parties subsequently filed complaints in several district courts. On the same day, EPA published proposed regulations consolidating the requirements and procedures for five EPA permit programs, including the NPDES program under the CWA, the Hazardous Waste Management Program (HWMP) under the Resource Conservation and Recovery Act (RCRA), the Underground Injection Control (UIC) program under the Safe Drinking Water Act (SDWA), State "Dredge and Fill" permit programs under section 404 of the CWA, and the Prevention of Significant Deterioration (PSD) program under the Clean Air Act (CAA). These new consolidated permit regulations took the place of the final NPDES regulations at 40 CFR Parts 122-124. Final consolidated permit regulations were published on May 19, 1980, 45 FR 35290. Again, these regulations were challenged in court. Petitions for review were filed in several Courts of Appeal and subsequently consolidated in the District of Columbia Circuit (*NRDC* v. *EPA*, and consolidated cases (No. 80-1607).) EPA held extensive discussions on all issues raised in these petitions and subsequently signed three separate Settlement Agreements with industry litigants. The first of these addresses substantive issues affecting only the UIC program was signed on July 22, 1981. Final amendments implementing that agreement were published in the **Federal Register** on September 27, 1981 (46 FR 43156), and on February 3, 1982 (47 FR 4992). The second agreement, signed on November 16, 1981, addresses substantive issues affecting only the RCRA program. Proposed amendments have not yet been published to implement that agreement. The third agreement, also signed on November 16, 1981, and filed with the D.C. Circuit, relates to issues raised by the parties which were common to at least two of the three programs involved in the litigation (i.e. RCRA, NPDES, and UIC) and to three issues which affect the definition of "new discharger" and its effect on mobile drilling rigs. These last issues are applicable only to the NPDES program. (The "common issues" are also reflected in the RCRA settlement agreement to the extent the amendments propose changes to RCRA provisions.) In some instances the settlement agreements resulted in different proposed changes on a particular issue for each of the three programs. This was generally due to differing legal authority or policy consideration associated with each program. Under the terms of the third agreement, commonly referred to as the "Common Issues" Settlement Agreement, EPA must propose the amendments set forth below. If EPA promulgates final rules which are substantially the same as these proposed rules, (or in the case of proposed changes to § 122.6(a) and (d) and § 122.7(c) and § 122.60(b), which are the same as the proposed rules) the parties will withdraw their challenges to these regulations. EPA will consider carefully all public comments on this proposal before promulgating final regulations.

In addition, the President's Task Force on Regulatory Relief has designated the consolidated permit regulations for review by EPA. Settlement of the litigation and implementation of the agreements represents a major portion of the Agency's response to the Task Force. The Agency also expects to propose other changes to the consolidated permit regulations, consistent with those proposed below, in the course of this review. We expect that these other changes will be proposed in the latter half of 1982.

Section 1421 of the Safe Drinking Water Act requires the Administrator to provide an opportunity for public hearing prior to the promulgation of regulations for State UIC programs. Several of the proposed regulatory amendments apply to State UIC programs, and EPA, as required by law, will provide the opportunity for public hearing to consider those amendments as they relate to the UIC program. A hearing is scheduled for July 27, 1982, at 401 M Street, SW., Washington, D.C. 20460, Room 3906. EPA anticipates, however, that the 60-day public notice and comment period will provide ample opportunity for public imput. Therefore, unless sufficient public interest is shown, by means of written notification received at least 1 week prior to the scheduled date, we intend to forego the hearing in the interest of conserving limited agency resources.

II. Common Issues

A. Signatories (40 CFR 122.6)

The first of the changes affects the signatory provisions of 40 CFR § 122.6. Section 122.6(a) has been revised with respect to the level of officer authorized to sign permit applications for corporations. The existing regulation requires permit applications submitted on behalf of a corporation to be signed by a "principal executive officer of at least the level of vice president." The current proposal would change this to allow applications to be signed by "a responsible corporate officer" as defined in proposed § 122.6(a)(1). This definition incorporates into the regulation EPA's interpretation of "executive officer of the level of vice president" adopted in a previously published policy statement (45 FR 52149, August 6, 1980). That statement clarified that an officer performing "policy-making functions" similar to those performed by a corporate vice-president could sign permit applications. In addition, the manager of one or more manufacturing, production, or operating facilities of a corporation can now qualify as a "responsible corporate officer" if the facilities employ more than 250 persons or have gross national sales or expenditures exceeding $25 million, as long as the manager has been authorized to sign applications in accordance with proper corporate procedures. Formal assignments or delegations of authority are not necessary for corporate officers identified in § 122.6(a)(1)(i). EPA believes that the ability to delegate signatory responsibility to corporate managers of facilities which fit within the specified levels is justified for several reasons. Those corporate divisions which do fit within the definition will, in many cases, be larger than the total operations of other smaller corporations whose corporate officers must sign permit applications. In addition, larger corporations frequently must submit many more permit applications than smaller businesses. EPA believes that this propsal will reduce the burden of investigating and signing numerous permit applications for executive officers of extremely large

This information is reproduced with permission from HeinOnline, under contract to EPA. By including this material, EPA does not endorse HeinOnline.

corporations, while continuing to maintain a high level of corporate responsibility in the permit application process.

This proposal would also revise the certification language of § 122.6(d). Under the current § 122.6(d), the signer of the form must have personally examined and be familiar with all information submitted with the application. Under the revised §122.6(d) certification language, the person signing the form (the signer) must have some form of direction or supervision over the persons gathering the data and preparing the form (the preparers), although the signer need not personally or directly supervise these activities. The signer need not be in the same corporate line of authority as the preparers, nor do the persons gathering the data and preparing the form need to be company employees (e.g., outside contractors can be used). It is sufficient that the signer has authority to assure that the necessary actions are taken to prepare a complete and accurate application form. For example, the signature of an "environmental" vice president is acceptable if the signer has the requisite authority. Such authority should include the power to direct that revisions be made to the application form if necessary. The signer does have a duty of inquiry of the persons responsible for managing the system or gathering the information in order to satisfy himself that the information submitted is true, accurate and complete. Again, the Agency believes this change will continue to guarantee a high level of corporate involvement and responsibility in the permit application process, whicle eliminating the burdensome requirement of personal examination of all information submitted with the application by those individuals responsible for signing permit applications. (Additional changes to the certification provision for RCRA permit applications were agreed to in the RCRA Settlement Agreement. These will be addressed in a separate rulemaking proposal.)

Pursuant to 42 U.S.C. 6974 and 40 CFR 260.20, the Departments of the Interior and Agriculture petitioned the Administrator of the EPA for modification of § 122.6(a)(3) to allow authorized representatives of a principal executive officer or ranking elected official to sign permit applications submitted on behalf of municipalities, State, Federal or other public agencies. These Departments argued that the required level of signatory was administratively cumbersome in light of the level of review and certification required by §122.6(d). EPA believes that the proposed revision of the certification provision discussed above, which eliminates the requirement of personal examination of all information submitted with the application, adequately addresses the concerns raised by the Departments of the Interior and Agriculture. Therefore, no change to the signatory requirement of §122.6(a)(3) for public agencies is proposed. EPA solicits comments on this position.

B. Duty to Mitigate (40 CFR 122.7(d))

Section 122.7(d) requires permittees to "take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with RCRA, UIC, NPDES or State section 404 "dredge and fill" permits. Industry petitioners feared that misinterpretation of this provision might imply an obligation to assume liability for medical costs for persons harmed by the results of any noncompliance. The Settlement Agreements require EPA to propose revisions to clarify the intent of the provision. In the case of NPDES and State "dredge and fill" permits, the revised language focuses on the permittee's obligations to "minimize or prevent" non-complying discharges. These permittees are required to take steps to minimize or prevent those non-complying discharges which have "a reasonable likelihood of adversely affecting human health or the environment." RCRA permittees would be required to "take all reasonable steps to minimize releases to the environment," and to "carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment."

The proposed language changes are not intended to suggest that a permittee need not comply with all conditions of its permit. All conditions of a permit must be met, whether or not they would be likely to lead to adverse effects. These conditions impose an *additional* requirement of mitigation measures when non-compliance with the permit presents a risk of environmental harm.

Industry UIC petitioners withdrew their challenge to § 122.7(d) as part of the UIC settlement agreement. Accordingly, if EPA adopts these proposed amendments in final form, the existing text of that Section will be redesignated as § 122.41(f), applicable to UIC only.

C. Other Federal Statutes (40 CFR 122.12)

Section 122.12 lists a number of Federal statutes which may be applicable to the issuance of RCRA, UIC, or NPDES permits. Industry petitioners feared that misinterpretation of the provision might result in the imposition of substantive permit requirements which were not required by the listed statutes. EPA is proposing to rewrite the introductory paragraph to the section to make it clear that the Agency does not intend by these regulations to condition or deny permits based on those statutes when these actions are not required by the statutes themselves. The principal purposes of the section is not to impose requirements, but to notify permit issuers of requirements that already exist, and which may be applicable to particular permits.

D. Continuation of Expired Federal Permits in Approved States (40 CFR 122.5(d))

Permits often expire after the submission of a timely and complete renewal application, but before the issuing agency has been able to act on the renewal application. In such cases, if EPA is the permit issuing agency, the Administrative Procedure Act (5 U.S.C. 558(c)) automatically extends the expiring permit until EPA acts on the renewal application. Section 122.5(d) allows approved State permit-issuing agencies to continue State or federally issued permits if their State has an administrative procedure law similar in operation to the Federal Administrative Procedure Act (APA). However, Federal law does not automatically continue these permits.

Industry petitoners requested that EPA amend its regulations to provide that if an EPA-issued permit expires in a State which has been authorized to administer the NPDES or RCRA program, and the applicant has properly re-applied for a permit, the original permit will automatically continue in force until such time as the State reissues the permit, irrespective of what the State APA provides.

In States with no State extension law, EPA has concluded that it is unable to provide for the automatic extension of NPDES permits, due to the Clean Water Act's requirement that permits be issued for "fixed terms not exceeding five years." For RCRA permits, the continuation problem should seldom arise because EPA will be proposing that federally-issued permits extend over the anticipated life of the permitted facility. (See RCRA Settlement Agreement, signed November 16, 1981, issue number nine). Nevertheless, should the problem arise, we have concluded that we have authority to provide for automatic extension of EPA-

This information is reproduced with permission from HeinOnline, under contract to EPA. By including this material, EPA does not endorse HeinOnline.

issued RCRA permits, even after State assumption of permit-issuing authority, and have done this in proposed § 122.5(d)(2).

Although EPA is unable to provide for the automatic continuation of expired federally-issued NPDES permits in States which have been approved to run the program, the Agency believes that a permittee who has done all it can to comply with the requirements for re-issuance should not be penalized for a State's inability to act promptly. Therefore, the Agency has adopted the following policy with respect to these permits. If a State program has been approved, expired federally-issued permits do not remain in effect unless continued under State law. However, if the discharger, owner, or operator has submitted a timely and complete application for a renewal permit to the State, and the State has not acted, EPA will refrain from initiating an enforcement action based on the applicant's failure to have a permit if the applicant continues to comply with the terms of the expired permit, unless the permitted activity presents an imminent and substantial endangerment to the environment or human health.

EPA recognizes that this policy does not, nor can it, provide certain protection from citizen suits against facilities without required permits. However, in these circumstances, we would not expect a court to assess penalties if delays in permit reissuance were not due to failure of the facility owner or operator to submit required information.

This policy is not being extended to federally-issued UIC permits. Though program requirements and procedures are currently being developed to implement a federal UIC program, no federal program has yet been established and thus, no federally-issued permits exist. Once the federal program is implemented, UIC permits will generally be issued for a term of 10 years for Class I and V wells, and for a term extending over the life of the facility for Class II and III wells. Thus no need for a non-enforcement policy has been demonstrated with respect to UIC permits, and EPA sees no reason to limit its enforcement discretion where such a need does not exist. This decision in no way limits the Agency's ability to provide appropriate relief on a case-by-case basis in the future if need is shown.

In the case of section 404 "dredge and fill" permits, the Corps of Engineers issues the federal permits and thus EPA has no authority to extent this policy to permits issued under that program.

E. State Adoption of EPA Civil Penalty Policy (40 CFR § 123.9)

EPA proposes to amend § 123.9(c) to eliminate the requirement that States adopt specific methods provided for calculating civil penalties. As proposed, the section would merely require that any civil penalty agreed upon by the State Director must be "appropriate to the violation." Elimination of the remainder of the provision will afford States a greater degree of flexibility in administering their civil enforcement program. Of course, to the extent the penalties assessed by the State are in amounts substantially inadequate in comparison to amounts EPA would have required under similar facts, EPA may exercise its authority, when granted by applicable statute, to commence its own actions for penalties.

F. Commencement of Operations Pending Hearing on Appeal (40 CFR §§ 124.60, 124.119)

The Settlement Agreement requires EPA to propose several amendments to § 124.60. Section 124.60 governs the circumstances under which a new source new discharger, or recommencing discharger, whose initial permit has been challenged in a formal hearing, may begin operations pending the outcome of the hearing or an appeal of its denial. Upon the applicant's request, the current provision allows the Presiding Officer to grant an order authorizing the source to begin operations if no party opposes the order or if the applicant shows that: (1) It is likely to prevail on the merits; (2) No irreparable harm will result from its discharges in the interim; and (3) The public interest requires commencement of operations. If an "early operation order" is granted, the source must operate in compliance with all conditions of the final permit issued by the Agency.

Industry petitioners argued that in many cases the stringency of these requirements prevented the commencement of operations pending the outcome of often lengthy administrative proceedings, in some cases lasting several years. Though EPA does not agree with industry's characterization of the severity of the problem, the Agency does believe that some relief is appropriate. Today's proposal establishes a more flexible scheme for obtaining an "early operation order" which the Agency, nonetheless, believes still maintains an adequate degree of environmental protection pending "final agency action" on a permit. The specific proposed changes affect both the scope of an "order" and the demonstration necessary to obtain one. First, orders may now authorize an NPDES source to begin "discharging" as opposed to "operations." This proposed language clarifies the Agency's original meaning of the term "operations" as it applied to NPDES permittees. In the case of RCRA permits, the order may authorize either construction (under certain limited circumstances) or operation, since RCRA permits do not authorize discharge as do NPDES permits. Second, the three-part demonstration required of the source to obtain an "early discharge order" has been changed to impose somewhat less burdensome requirements. Rather than demonstrating a likelihood of prevailing on the merits, the source need only show that it is likely to receive a permit to discharge (or operate in the case of RCRA permits.) The source must still show that no irreparable harm to the environment will result from its discharge/operations and that its discharge/operations is in the public interest. If the source makes this demonstration, or no party opposes the request, the Presiding Officer must grant the order. This is a change from the current provision under which his authority is discretionary.

Third, the Presiding Officer in a formal hearing is empowered by the rule to include "appropriate conditions" in lieu of the conditions set by the EPA. The previous rule precluded the Presiding Officer from imposing conditions other than those in the EPA permit, which may be under challenge. This new provision allows the Presiding Office to set "appropriate conditions" effective during the evidentiary hearing which are more stringent if necessary to meet the requirements of § 124.60(a)(2)(i)–(iii) or which are less stringent when those requirements would be satisfied by the less stringent conditions. The Presiding Officer may grant relief under § 124.60 even if the challenge involves the entire authorization to discharge, such as a challenge to an EIS supporting the issuance of the permit. In such cases, even though the entire permit may be under challenge, such that there are no uncontested conditions, the Presiding Officer has authority to set conditions to satisfy the requirements of § 124.60(a)(2)(i)–(iii) that must be met if the applicant is authorized to discharge during the evidentiary hearing.

Finally, the Presiding Officer can issue an order allowing a RCRA facility to begin construction only if no construction-related condition of the permit have been challenged. (In a

This information is reproduced with permission from HeinOnline, under contract to EPA. By including this material, EPA does not endorse HeinOnline.

technical amendment published on April 8, 1982, 47 FR 15304, EPA amended § 124.60 to add the term "or facility" following each mention of the term "source" in order to clarify the application of this provision to RCRA facilities.)

In addition, a new § 124.119, applicable only to NPDES permittees, is proposed which would make the same provisions for obtaining an "early discharge order" applicable in non-adversary panel hearings. These orders can only be obtained for sources covered by an individual permit.

Under § 124.81, the Regional Administrator is required to request the Chief Administrative Law Judge to assign an Administrative Law Judge to an evidentiary hearing no later than the notice granting the hearing. Assignment of an ALJ may become particularly urgent in cases involving new sources and new dischargers which may wish to file a motion under § 124.60. Applicants who believes they will seek such a motion may, in requesting an evidentiary hearing, also request the Regional Administrator to ask for an expedited assignment of an ALJ with whom the motion may be filed. Regional Administrators should freely grant such requests.

A new § 124.60(c), applicable only to NPDES permits, is proposed which would establish a new procedure applicable to those mobile drilling rigs which are proposed to be excluded from the "new discharger" classification. Mobile rigs excluded from the new discharger classification would become "existing sources" for the purposes of the consolidated permit regulations, even if the rig has never received a finally effective permit to discharge at a given site. Under § 124.16, if a request for review of an NPDES permit for an existing source is granted, the contested permit conditions are stayed pending final agency action. In such cases a source with an existing permit must comply with the terms of its previous permit. In order to allow controls to be imposed when necessary on owners or operators of mobile drilling rigs which do not have existing permits, EPA proposes new § 124.60(c)(7). This proposal provides that if the Regional Administrator determines that compliance with certain permit conditions may be necessary to avoid irreparable environmental harm during administrative review, he may specify in the statement of basis or fact sheet for the permit those conditions which, even if contested, will remain enforceable during the administrative review. The Presiding Officer may change this determination in connection with his authority to grant "early discharge orders" under paragraph (a)(2) of this section.

III. NPDES Issues

The following proposed changes apply only to the NPDES program.

A. Need to Halt or Reduce Activity to Maintain Compliance (40 CFR 122.60(b)

The Agency is proposing to delete § 122.60(b). Section 122.60(b) requires that upon reduction, loss, or failure of the treatment facility, a permittee, in order to maintain compliance with its permit limitations, must control production, or all discharges, or both until treatment is restored. Industry petitioners in the consolidated permit regulations litigation argued that a mandatory requirement to cease or reduce production or discharges in all cases where failure of the treatment system results in noncompliance with the permit is unreasonable. In some circumstances, noncompliance may not be serious enough to justify ceasing production or discharge. The requirement to halt production was particularly troublesome to the electric utilities industry, which asserted that in some cases state law requires utilities to provide a continuous, reliable supply of electric power, and that § 122.60(b) could place utilities in the position of violating state law in order to comply with NPDES requirements, even in the event of only minor permit violations.

EPA believes that the appropriateness of controlling production or discharge may vary with the situation and thus, is more suitably dealt with as a question of defense to liability in enforcement proceedings. On April 5, 1982, 47 FR 15304 EPA revised the caption of § 122.7(c) "Duty to Halt or Reduce Activity" to "Need to Halt or Reduce not a Defense," to clarify the intent of that section that a permittee will not be allowed to defend its noncompliance in an enforcement action on the ground that it would have had to halt or reduce its regulated activity. The Agency believes that § 122.7(c) adequately addresses the intent of § 122.60(b). Thus, to avoid unnecessary duplication the Agency proposes to delete § 122.60(b) in its entirety.

B. New Discharger Issues

The second proposed change concerns the application of the "new discharger" classification to mobile oil and gas drilling rigs. The current "new discharger" definition specifically includes mobile drilling rigs. Each time a mobile drilling rig move to a new unpermitted site it is required to apply for a new NPDES permit, subjecting it once again to the new discharger requirements. As a result of inclusion in the new discharger classification, if an evidentiary hearing is requested, either by the applicant or a third party, the mobile point source is without a permit until the conclusion of the hearing or an appeal of its denial, 40 CFR 124.60(a)(1). The Agency's original basis for including mobile drilling rigs in the "new discharger" definition was its belief that the commencement of operations at a new site constituted a new environmental insult which must be independently analyzed before imposing permit limitations and conditions. However, the Agency's experience in issuing permits to oil and gas facilities in the Gulf of Mexico has shown that this is not always true. On April 13, 1979, EPA issued three general permits for drilling operations in Outer Continental Shelf (OCS) lease sale areas in the Gulf of Mexico. These permits imposed a common set of limitations and conditions applicable to all mobile rigs operating in the designated general permit areas. The issuance of these general permits allows mobile rigs to move freely within the area of coverage defined in the general permit. Their use eliminates the time-consuming requirement, burdensome to mobile rigs, of obtaining new NPDES permits prior to each move, and in addition, significantly reduces the resources burden for the permitting authority. In today's **Federal Register** notice, EPA is proposing regulatory amendments which would establish a general permitting scheme for oil and gas operations within the OCS. Because it will take some time before the Agency can issue general permits for oil and gas facilities in all OCS lease sale areas, and because approved NPDES States will not be required to issue general permits, rather than individual permits, to oil and gas facilities in all OCS lease sale areas, and because approved NPDES States will not be required to issue general permits, rather than individual permits, to oil and gas facilities, the Agency believes that mobile drilling rigs should, in most cases, be excluded from coverage in the "new discharger" classification. This exclusion is subject to two limitations. First, the exclusion will cover all mobile *exploratory* drilling rigs operating in both offshore and coastal areas, and mobile *developmental* rigs operating in *coastal* areas. However, mobile *developmental* rigs operating in any *offshore* area will continue to be included in the "new discharger" category if they would

This information is reproduced with permission from HeinOnline, under contract to EPA. By including this material, EPA does not endorse HeinOnline.

otherwise fit the definition. Developmental rigs operating in offshore areas are treated differently for several reasons. Developmental rigs generally remain at a given site for longer periods of time than do exploratory rigs and have more advance notice before moving to new sites. Thus, the burdens of obtaining a new permit prior to moving to a new site are not as great as for exploratory rigs.

More importantly, developmental rigs pose more risk of harm to the marine environment than exploratory rigs. Ordinarily, an exploratory rig drills a limited number of wells, (e.g., one (1) to three (3) wells to identify the nature and extent of potential oil or gas reserves. A developmental rig, on the other hand, may drill a large number of wells (e.g., anywhere from 3 to 60 wells) and generally remains at a given site for longer periods of time while developing oil or gas reserves. Thus, the volume of pollutants discharged can be far greater than in the case of exploratory rigs, and movement to a new site could indeed constitute a significant new environmental insult. In issuing NPDES permits for offshore discharges, EPA has an obligation under section 403(c) of the Clean Water Act (CWA) to determine whether or not unreasonable degradation of the marine environment will occur as a result of the discharge. In accordance with guidelines published pursuant to Section 403(c), the Agency must make this determination prior to permit issuance. No permit can be issued if unreasonable degradation will occur. If there is insufficient information to make a determination as to unreasonable degradation, no NPDES permit can be issued unless the Agency determines that such discharge will not cause irreparable harm to the marine environment. In light of the increased volume of pollutants potentially dicharged from developmental operations, EPA must perform complex analyses to develop adequate permit limitations and conditions. Thus, developmental rigs discharging into offshore waters will continue to be included in the "new discharger" definition. Section 403 does not apply to dicharges into coastal waters (as defined in 40 CFR 435.41(c)).

Second, all mobile oil and gas drilling rigs operating in an area of biological concern will continue to be considered "new dischargers" if they otherwise fit the definition. The Agency continues to believe that the commencement of operations in these environmentally sensitive areas should be carefully examined before imposing appropriate permit limitations. Of course, general permits may be appropriate for these areas, eliminating the need for re-evaluation of each site.

On August 29, 1980 the United States District Court, Western District of Louisiana, entered an order in *American Petroleum Institute* v. *Costle* (No. 79-0858) enjoining EPA from applying the "new discharger" definition to mobile drilling rigs operating in offshore areas adjacent to the Gulf Coast, the Atlantic Coast, California, and Alaska, except in the Flower gardens and other areas determined to be environmentally sensitive by the Bureau of Land Management. In accordance with that order, EPA on October 15, 1980, suspended the application of the "new discharger" definition to offshore mobile drilling rigs operating in these areas, 45 FR 68391. That suspension will continue in effect until new final regulations are published. At that time, the parties will move to dismiss the complaint as to the issue covered by the Settlement Agreement, and thereby to vacate the August 29, 1980, order.

EPA issues NPDES permits to offshore oil and gas facilities involved in the identification and recovery of hydrocarbon reserves, including mobile drilling units and fixed platforms discharging into ocean waters beyond the three mile limit of the territorial seas. EPA also issues NPDES permits to these facilities operating in the territorial seas if the adjoining State does not have an approved NPDES permit program. EPA's current consolidated permit regulations at 40 CFR 122.59 authorize the issuance of NPDES general permits to control the discharge of pollutants from a category of point sources located in the same geographic area if it is determined that their discharges warrant similar pollution control measures. EPA proposes to revise § 122.59 to require Regional Administrators to issue general permits, rather than individual permits, for most discharges from oil and gas exploration and production facilities within the Region's jurisdiction, unless the use of a general permit is demonstrated to be clearly inappropriate.

The traditional regulatory framework for NPDES permits requires that an owner or operator of a facility file an application for a permit; therefore, the permit process does not begin until the identity of the owner or operator is established after the Final Notice of Sale by the Bureau of Land Management (BLM). EPA proposes the use of general permits for oil and gas facilities in existing lease sale areas, as well as future lease sale areas established by the BLM. The general permit should eliminate this post-lease delay in permit issuance. The provisions for general permits provide that sufficient information may be available to determine permit conditions without application information. Therefore, general permits can be issued without a named party and without any application required from individual owners or operators. In addition, final general NPDES permits are not subject to evidentiary hearings (although the Regional Administrator may in his discretion hold a panel hearing), thereby eliminating another time-consuming aspect of the NPDES process.

EPA's decision to issue a general permit is dependent upon information sufficient to determine appropriate permit conditions. For discharges into the marine waters, the information must be sufficient to address specific criteria set forth in the Ocean Discharge Criteria under section 403(c) of the Clean Water Act (40 CFR 125.122). Since EPA's mechanism for obtaining necessary information rests with the NPDES application, eliminated in the general permit program, the issuance of general permits during the OCS lease sale process will depend upon close cooperation and coordination between the Department of the Interior (DOI) and EPA. A Memorandum of Understanding (MOU) which will provide the mechanism for further coordination of NPDES permit issuance and lease sale activities is currently under development and review by both agencies.

With sufficient information to determine permit conditions, general NPDES permits may be issued for entire tracts or groups of tracts offered in OCS lease sales. The provision for the use of general permits also applies to discharges into the territorial seas when EPA is the permit-issuing authority and sufficient information exists to determine appropriate permit conditions. Generally, broad areas of a lease sale will require the same effluent limitations and self-monitoring and reporting requirements, and, therefore, are appropriately controlled by a single general permit. Areas of biological concern within a lease sale area should also be subject to general permits. However, these areas of biological concern will require permit conditions which differ from those contained in a broader area general permit. In such cases separate general permits are necessary. If a lease sale area contains several areas of biological concern with different community structure, they may be more appropriately controlled by

This information is reproduced with permission from HeinOnline, under contract to EPA. By including this material, EPA does not endorse HeinOnline.

separate general permits or by individual permits. However, individual permits should only be used when a general permit is clearly inappropriate.

EPA is developing criteria to identify areas of biological concern on the outer continental shelf. These criteria will provide those personnel involved in making permit decisions for the OCS with a comprehensive methodology that can be applied in determining habitat sensitivity. Criteria for objectively "scoring" a candidate habitat against sensitivity criteria and techniques for evaluating such "scorings" will enable EPA to determine the types of hazard assessments required, and identify the appropriate mitigating measures for permit effluent limitations and conditions.

Section 122.59(c)(2) requires that when a Regional Administrator determines that a general permit is appropriate for a particular offshore lease sale area, he shall issue a project decision schedule which complies with the requirements of § 124.3(g) and which provides for the issuance of a final general permit no later than the date of final notice of sale of the lease sale area as projected by the Department of Interior or 6 months after the date of request for a general permit, whichever is later. As with all dates projected in project decision schedules, the Regional Administrator should strive to meet such deadlines. Recognizing, however, that factors beyond the control of EPA (*e.g.*, failure of the enviornmental impact statement to provide adequate information upon which to base decisions required by section 403(c) of the CWA) could delay the issuance of the final general permit beyond the dates projected in the project decision schedule, the Regional Administrator shall, in any event, on or before the final notice of lease sale, issue a draft general permit for those areas which are not potential areas of biological concern or do not otherwise need separate permit conditions.

C. Modification of NPDES Permits (40 CFR 122.15)

In order to prevent unnecessary administrative hearings and litigation during rulemaking proceedings on these proposals, EPA has agreed to propose a new § 122.15(a)(5) allowing NPDES permits which became final after August 19, 1981, to be modified to conform to any final rule adopted under the Settlement Agreement for §§ 122.7(c) and 122.60(b). Changes proposed today relating to other provisions would not affect the terms or conditions of existing permits. The cut-off date is proposed so as to prevent unnecessary modifications which could place an unreasonable strain on Agency or State resources.

IV. Effective Date

Section 553(d) of the Administrative Procedure Act (APA) requires publication of a substantive rule not less than 30 days before its effective date. In addition, section 3010(b) of RCRA provides that EPA's hazardous waste regulations, and revisions thereto, take effect six months after their promulgation. The purpose of these requirements is to allow permittees sufficient lead time to prepare to comply with new regulatory requirements. For the amendments proposed today, however, EPA believes that an effective date 30 days or six months after promulgation would cause unnecessary disruption in the implementation of the regulations and would be contrary to the public interest. 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. These amendments, if promulgated in final form, would relieve restrictions on permittees under the NPDES, RCRA and UIC programs by providing greater flexibility in meeting the requirements of the programs. EPA believes that these are not the type of regulations that Congress had in mind when it provided a delay between the promulgation and the effective date of revisions to regulations. Consequently, EPA believes it will have good cause to make these amendments effective immediately if and when they are promulgated in final form, but requests comments on whether such action would cause hardship for the regulated community or otherwise be inappropriate.

V. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. These amendments clarify the meaning of several generic permit requirements and generally make the regulations more flexible and less burdensome for affected permittees. They do not satisfy any of the criteria specified in section 1(b) of the Executive Order and, as such do not constitute major rulemakings. This regulation was submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at the office of Water Enforcement and Permits, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., EPA must submit a copy of any proposed rule which contains a collection of information requirement to the Director of OMB for review and approval. These amendments contain no information collection requests and therefore the Paperwork Reduction Act is not applicable.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of entities. Today's proposed amendments to the regulations clarify the meaning of several generic permit requirements and otherwise make the regulations more flexible and less burdensome for all permittees. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b) that these amendments will not have a significant impact on a substantial number of small entities.

Dated: June 1, 1982.

Anne M. Gorsuch,

Administrator.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Air pollution control, Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, confidential business information.

40 CFR Part 123

Hazardous materials, Indians—lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Indians—lands.

It is proposed that 40 CFR Parts 122,123, and 124 be amended as follows:

US EPA ARCHIVE DOCUMENT

This information is reproduced with permission from HeinOnline, under contract to EPA. By including this material, EPA does not endorse HeinOnline.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM; THE HAZARDUS WASTE PERMIT PROGRAM; AND THE UNDERGROUND INJECTION CONTROL PROGRAM

1. Section 122.3 is proposed to be amended by revising the definition of "New discharger" as follows:

§ 122.3 Definitions.

"New discharger" (NPDES) means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants;"

(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(c) which is not a "new source;" and

(d) Which has never received a finally effective NDPES permit for discharges at that "site."

This definitions includes and "indirect discharger" which commences discharging into "waters of the United States" after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a "site" for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a "site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be area of biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122(a)(1) through (10). An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

* * * * *

2. Section 122.5 is proposed to be amended by revising paragraph (d) as follows:

§ 122.5 Continuation of expiring permits.

* * * * *

(d) *State continuation.* (1) An EPA-issued NPDES or UIC permit, or a Corps of Engineers 404 permit, does not continue in force beyond its expiration date under Federal law if at that time a State is the permitting authority. States authorized to administer the UIC, NPDES, or 404 programs may continue either EPA or Corps of Engineers or State-issued permits until the effective date of the new permits, if State law allows. Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit.

(2) In a State with a hazardous waste program authorized under 40 CFR Part 123, Subparts A and B or Subpart F, if a permittee has submitted a timely and complete application under applicable state law and regulations, the terms and conditions of an EPA-issued RCRA permit continue in force beyond the expiration date of the permit, but only until the effective date of the State's issuance or denial of a State RCRA permit.

3. Section 122.6 is proposed to be amended by revising paragraphs (a)(1) and (d) as follows:

§ 122.6 Signatories to permit applications and reports.

(a) * * *

(1) *For a corporation:* by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note.—EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in § 122.6(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign RCRA and NPDES permit applications may provide for assignment or delegation to applicable corporate positions under § 122.6(a)(1)(ii) rather than to specific individuals.

* * * * *

(d) *Certification.* Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

§ 122.7 [Amended]

4. Section 122.7 is proposed to be amended by removing paragraph (d) and redesignating paragraphs (e) through (l) as (d) through (k).

5. Section 122.12 is proposed to be amended by revising the introductory paragraph as follows:

§ 122.12 Considerations under Federal law.

The following is a list of Federal laws that may apply to the issuance of permits under these rules. When any of these laws is applicable, its procedures must be followed. When the applicable law requires consideration or adoption of particular permit conditions or requires the denial of a permit, those requirements also must be followed.

* * * * *

6. Section 122.15 is proposed to be amended by adding paragraph (a)(5)(xii) as follows:

§ 122.15 Modification or revocation and reissuance of permits.

(a) * * *

(5) * * *

(xii) When the permit becomes final and effective on or after August 19, 1981, if the permittee shows good cause for the modification, to conform to changes respecting the following regulations issued under the Settlement Agreement dated November 16, 1981, in connection with *Natural Resources Defense Council* v. *EPA*, No. 80–1607 and consolidated cases:

Section 122.7(c)
Section 122.60(b)

* * * * *

7. Section 122.28 is proposed to be amended by redesignating paragraphs (d) and (e) as (e) and (f), and adding a new paragraph (d) as follows:

§ 122.28 Additional conditions applicable to all RCRA permits.

* * * * *

(d) In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall

This information is reproduced with permission from HeinOnline, under contract to EPA. By including this material, EPA does not endorse HeinOnline.

carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

* * * * *

8. Section 122.41 is proposed to be amended by adding a new paragraph (f) as follows:

§ 122.41 Additional conditions applicable to all UIC permits.

* * * * *

(f) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

* * * * *

9. Section 122.59 is proposed to be amended by adding a new paragraph (c) as follows:

§ 122.59 General permits.

* * * * *

(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) 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 he 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 § 122.59(b)(2)(i) (A) through (F).

10. Section 122.60 is proposed to be amended by revising paragraph (b) as follows:

§ 122.60 Additional conditions applicable to all NPDES permits.

* * * * *

(b) The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

* * * * *

PART 123—STATE PROGRAM REQUIREMENTS

11. Section 123.9 is proposed to be amended by revising paragraph (c) and adding a new first paragraph to the note following paragraph (c) as follows:

§ 123.9 Requirements for enforcement authority.

* * * * *

(c) A civil penalty assessed, sought, or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation.

Note.—To the extent that State judgments or settlements provide penalties in amounts which EPA believes to be substantially inadequate in comparison to the amounts which EPA would require under similar facts, EPA, when authorized by the applicable statute, may commence separate actions for penalties.

* * * * *

12. Section 123.97 is proposed to be amended by adding a new paragraph (e) as follows:

§ 123.97 Additional conditions applicable to all 404 permits.

* * * * *

(e) The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

PART 124—PROCEDURES FOR DECISIONMAKING

§ 124.3 Application for a permit.

13. Section 124.3(g) is proposed to be amended by adding the following after the words "new discharger" and before the words "the Regional Administrator shall * * *":

* * * * *

(g) * * * or a permit to be issued under provisions of § 122.59(c) * * *

14. Section 124.60 is proposed to be amended by revising paragraph (a)(2) and adding new paragraphs (a)(3) and (c)(7) as follows:

§ 124.60 Issuance and effective date and stays of NPDES permits.

* * * * *

(a) * * *

(2) Whenever a source or facility subject to this paragraph or to paragraph (c)(7) of this section has received a final permit under § 124.15 which is the subject of a hearing request under § 124.74 or a formal hearing under § 124.75, the Presiding Officer, on motion by the source or facility, may issue an order authorizing it to begin discharges (or in the case of RCRA permits, construction or operations) if it complies with all uncontested conditions of the final permit and all other appropriate conditions imposed by the Presiding Officer during the period until final agency action. The motion shall be granted if no party opposes it, or if the source or facility demonstrates that:

(i) It is likely to receive a permit to discharge (or in the case of RCRA permits, to operate) at that site;

(ii) The environment will not be irreparably harmed if the source or facility is allowed to begin discharging (or in the case of RCRA, to begin operating) in compliance with the conditions of the Presiding Officer's order pending final agency action; and

(iii) Its discharge (or in the case of RCRA, its operation) pending final agency action is in the public interest.

(3) *For RCRA only,* no order under paragraph (a)(2) may authorize a facility to commence construction if any party has challenged a construction-related permit term or condition. If no party has challenged a construction-related permit term or condition, the Presiding Officer, on motion by the facility, shall issue an order authorizing it to begin construction under the terms of paragraph (a)(2).

* * * * *

(c) * * *

(7) If for any offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig which

This information is reproduced with permission from HeinOnline, under contract to EPA. By including this material, EPA does not endorse HeinOnline.

has never received a finally effective permit to discharge at a "site," but which is not a "new discharger" or a "new source," the Regional Administrator finds that compliance with certain permit conditions may be necessary to avoid irreparable environmental harm during the administrative review, he may specify in the statement of basis or fact sheet that those conditions, even if contested, shall remain enforceable obligations of the discharger during administrative review unless otherwise modified by the Presiding Officer under paragraph (a)(2) of this section.

15. Section 124.119 is proposed to be amended by adding new paragraphs (c) and (d) as follows:

§ 124.119 Presiding Officer.

* * * * *

(c) Whenever a panel hearing will be held on an individual draft NPDES permit for a source which does not have an existing permit, the Presiding Officer, on motion by the source, may issue an order authorizing it to begin discharging if it complies with all conditions of the draft permit or such other conditions as may be imposed by the Presiding Officer in consultation with the panel. The motion shall be granted if no party opposes it, or if the source demonstrates that:

(i) It is likely to receive a permit to discharge at that site;

(ii) The environment will not be irreparably harmed if the source is allowed to begin discharging in compliance with the conditions of the Presiding Officer's order pending final agency action; and

(iii) Its discharge pending final agency action is in the public interest.

(d) If for any offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig which has never received a finally effective permit to discharge at a "site," but which is not a "new discharger" or "new source," the Regional Administrator finds that compliance with certain permit conditions may be necessary to avoid irreparable environmental harm during the nonadversary panel procedures, he may specify in the statement of basis or fact sheet that those conditions, even if contested, shall remain enforceable obligations of the discharger during administrative review unless otherwise modified by the Presiding Officer under paragraph (c) of this section.

[FR Doc. 82-15856 Filed 6-11-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 761

[OPTS 62017A; TSH FRL 2103-7]

Polychlorinated Biphenyls (PCBs); Manufacture, Processing, Distribution, and Use in Closed and Controlled Waste Manufacturing Processes

Correction

In FR Doc. 82-15599 appearing on page 24976 in the issue of Tuesday, June 8, 1982, make the following correction.

On page 24976, in the first column, the "**DATES**" paragraph, the date for the informal hearing reading "August 6, 1982" should read "July 23, 1982" and the date for comments reading "July 23, 1982" should read "July 8, 1982".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-60; Notice 2]

Transportation of Natural and Other Gas by Pipeline; Hot Taps in Gas Pipelines

AGENCY: Materials Transportation Bureau (MTB), DOT.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: By Notice 1, MTB proposed that operators be required to determine the pressure in a pressurized pipeline before allowing the gas to flow through a newly made branch connection into another pipeline. The proposed rule was intended to preclude overpressurization hazards that can arise when two pipelines are erroneously connected. Although all commenters supported the safety objective to be attained, the proposed rule would be unnecessary in some cases, and MTB does not have enough historical accident data or other information about the potential for future accidents to clearly demonstrate that the expected benefits of the proposed rule would outweigh the costs of implementation. As a consequence, the proposed rulemaking action is hereby withdrawn.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow, 202-426-2392.

SUPPLEMENTARY INFORMATION:

Background

The National Transportation Safety Board (NTSB) investigated and reported on two pipeline accidents caused by operators making branch connections to pressurized pipelines other than the ones intended. The connecting procedure is called a "hot tap," and results in gas flowing to the connected piping without interrupting the operation of the tapped pipeline.

One accident occurred in Greenwich, Connecticut, on May 25, 1977, when a gas company crew tapped a 3-inch casing pipe, thinking it was a gas main. The crew did not have accurate maps or records to show the main's location. As a result, the tap severed a 2-inch gas line inside the casing and caused a massive gas escape that exploded, destroying 3 buildings and injuring 10 people.

The second accident happened May 17, 1978, at Mansfield, Ohio, during completion of the tie-in of a replacement for an 8-inch high pressure gas main. The gas company crew, mistakenly tapped an 8-inch low pressure gas main and connected it to the pressurized 8-inch high pressure main. The resulting overpressurization of the low-pressure system caused excessively high pilot flames on gas appliances that damaged 16 houses, 5 extensively. The mistaken connection occurred because the two mains were similar in appearance and crossed each other near where the connection was made. As in the Greenwich incident, gas company maps and records did not accurately show the correct location of the mains.

Following its investigation of the Mansfield incident, and in light of the Greenwich occurrence, NTSB made the following recommendation for rulemaking:

Revise 49 CFR Part 192 to require that gas system operators verify through pressure monitoring or other means the identity of all pipelines before performing hot taps. (P-78-51)

Proposed Rules

In the belief that operators should take steps, apart from reliance on maps and records, to reduce the chance of performing hot taps on the wrong pipelines, MTB published a notice of proposed rulemaking (NPRM) (44 FR 68491, November 29, 1979). The NPRM requested comments on a two-part proposal to revise an existing regulation (§ 192.627), which requires that hot taps be made "by a crew qualified to make hot taps."

The first part of the proposal would have redesignated the present rule as paragraph (a) of § 192.627, and modified the language to require that hot taps be made "by a person who has demonstrated competency in the application and use of the tapping equipment." This proposed amendment was to clarify the meaning of the phrase