

US EPA ARCHIVE DOCUMENT

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Corporation.

Dated: September 25, 2001.

**Richard Cavagnero,**

*Deputy Director, Office of Site Remediation  
and Restoration, Region I.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7071-9]

### Notice of Proposed NPDES General Permit for Egg Production Operations in New Mexico, Oklahoma, and on Indian Lands in New Mexico and Oklahoma NMG800000 and OKG800000

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

**ACTION:** Notice of draft NPDES general  
permits.

**SUMMARY:** EPA Region 6 is proposing to issue a general NPDES permit regulating discharges, or potential discharges, from egg production operations (EPOs). The United Egg Producers (UEP), a farmer cooperative that represents egg producers nationwide, has entered into an XL project agreement with EPA. This XL project will allow eligible EPOs to obtain permit coverage under a general permit, as an incentive for the industry's large producers to maintain environmentally superior facilities, if they implement a multi-media environmental management system (EMS). An EMS controls a range of significant environmental impacts including those not subject to regulation under the Clean Water Act, such as odor and pest control. Facilities that do not continue to comply with their general permit or do not adequately implement their EMS could be required to obtain individual NPDES permits. The project also includes a third-party auditing component and on-farm management practices most likely to result in superior environmental performance. Each facility's EMS will be required to pass the independent third-party audit before the facility can apply for coverage under the general permit.

**DATES:** Comments on this proposed permit must be submitted by December 3, 2001.

**ADDRESSES:** Comments on this proposed permit should be sent to the Regional Administrator, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

**FOR FURTHER INFORMATION CONTACT:** Ms. Diane Smith, EPA Region 6, 1445 Ross

Avenue, Dallas, Texas 75202-2733, telephone (214) 665-2145. Copies of the complete fact sheet and proposed permit may be obtained from Ms. Smith. The fact sheet and proposed permit can also be found on the Internet at <http://www.epa.gov/earth1r6/6wq/6wq.htm>. In addition, the current administrative record on the proposal is available for examination at the Region's Dallas offices during normal working hours after providing Ms. Smith 24 hours advanced notice.

#### Public Meetings

Public meetings on the proposed permit will be held at the locations listed below. The public meetings will include a presentation on the draft permit and a question and answer session. Written, but not oral, comments for the official permit record will be accepted at the public meetings.

Albuquerque, NM: November 1, 2001, 7 p.m. at the Albuquerque Technical Vocational Institute Workforce Training Center, Conference Room 106, 5600 Eagle Rock Ave. NE, Albuquerque, NM 87113.

Oklahoma City, OK: November 7, 2001, 7 p.m.; at the Metro Tech Business Conference Center, Big Dipper Conference Room, 1900 Springlake Drive, Oklahoma City, OK 73111.

#### Public Hearings

EPA has not scheduled any public hearings to receive public comment concerning today's proposal. All persons will continue to have the right to provide written comments at any time during the public comment period. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the proposed permit. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in the proposed permit. If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the proposed permit at the public hearing.

**SUPPLEMENTARY INFORMATION:** Regulated categories and entities include:

Category	Examples of regulated entities
Industry .....	Operators of egg production operations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your (facility, company, business, organization, etc.) is regulated by this action, you should carefully examine the applicability criteria in part I, section A.1 of this permit. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Section 301(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(a), makes it unlawful to discharge pollutants to waters of the United States in the absence of authorizing permits. CWA section 402, 33 U.S.C. 1342, authorizes EPA to issue National Discharge Elimination System (NPDES) permits allowing discharges on condition they will meet certain requirements, including CWA sections 301, 304, and 401 (33 U.S.C. 1331, 1314 and 1341). Those statutory provisions require that NPDES permits include effluent limitations requiring that authorized discharges: (1) meet standards reflecting levels of technological capability, (2) comply with EPA-approved state water quality standards and (3) comply with other state requirements adopted under authority retained by states under CWA 510, 33 U.S.C. 1370.

#### A. National Technology Guidelines

National guidelines establishing Best Available Technology (BAT) and New Source Performance Standards have been promulgated for certain sizes and types of facilities in the Feedlots Point Source Category and are codified at 40 CFR part 412. For laying hen operations, these guidelines apply to facilities having the capacity for 100,000 or more laying hens when the facility has unlimited continuous flow watering systems, and facilities having the capacity for 30,000 or more laying hens when the facility has liquid manure handling systems. The facilities potentially eligible to participate in this XL project have neither unlimited continuous flow watering systems nor liquid manure handling systems. These facilities have dry manure storage and

handling systems and do not use unlimited continuous flow watering systems. There are, therefore, no guidelines establishing BAT and New Source Performance Standards for the facilities potentially eligible for participation in this XL project, so these facilities will not meet the definition of new source in 40 CFR 122.2.

## B. Project XL

Project XL, which stands for "eXcellence and Leadership," is a national initiative that tests innovative ways of achieving better and more cost-effective public health and environmental protection. The information and lessons learned from Project XL are being used to assist EPA in redesigning its current regulatory and policy-setting approaches. Project XL encourages testing of cleaner, cheaper, and smarter ways to attain environmental results superior to those achieved under current regulations and policies, in conjunction with greater accountability to stakeholders. It is vital that each project tests new ideas with the potential for wide application and broad environmental benefits.

## C. United Egg Producers XL Project

The United Egg Producers (UEP), a farmer cooperative that represents egg producers nationwide, has entered into an XL project agreement with EPA to provide a comprehensive program to bring egg-producing facilities under NPDES permits faster, and help participating egg-producing facilities achieve superior environmental performance by implementing an environmental management system (EMS). This XL project allows these facilities to obtain permit coverage under a less costly and complex mechanism; i.e., a general permit and an EMS-based program tailored to the needs of the egg-laying industry, as an incentive for the industry's large producers to maintain environmentally superior facilities and practices. Facilities that do not continue to comply with their general permit or do not adequately implement their EMS could be required to obtain individual NPDES permits. This project was developed by a workgroup comprised of EPA, UEP members, several states, non-governmental organizations, and U.S. Department of Agriculture. The XL project final agreement was signed on October 25, 2000.

The XL project agreement requires participating facilities not only to comply with the terms of an NPDES general permit, but also to implement a multi-media EMS that controls a range of significant environmental impacts

including those not subject to regulation under the Clean Water Act, such as odor and pest control. The project also includes a third-party auditing component and on-farm management practices most likely to result in superior environmental performance. Each facility's EMS will be required to pass the independent third-party audit before the facility can apply for coverage under the general permit. Information on audit results will be provided to the appropriate regulatory authorities and will be available to local stakeholders. Ongoing audits will be conducted to ensure continuing implementation of the EMS, and audit results will be available to the public.

## D. Requirements for Obtaining Coverage

Owners/operators of EPOs seeking to be covered by the permit general permit must submit: (1) A notice of intent (NOI) to be covered by this permit; (2) evidence that the EPO has developed and implemented an EMS consistent with the guidelines set forth in the permit; (3) the results of a successful audit conducted by an independent third party for the purpose of applying for this permit; and (4) evidence that the EPO: Has placed a notice in the local newspaper that indicates the EPO has passed the audit and intends to submit the NOI, has sent the notice directly to local stakeholders, and has established a point of contact at the facility for public inquiries. Owners/operators of new EPOs must submit an NOI, have a complete comprehensive nutrient management plan (CNMP) and an EMS 180 days prior to commencement of operation.

## E. Egg Producing Operations Not Eligible for Coverage

The following EPOs are not eligible for coverage under this NPDES general permit:

1. EPOs that have failed an audit by an independent third party or been notified by EPA to apply for an individual NPDES permit.
2. EPOs that have been notified by EPA that they are ineligible for coverage because of a past history of non-compliance.
3. New and/or significantly expanding EPOs that apply manure and/or wastewater to lands that are adjacent to bodies that are listed under the Clean Water Act, section 303(d), as impaired due to inadequate oxygen, excessive nutrients, suspended solids, turbidity and/or pathogens and are notified by the EPA to apply for an individual NPDES permit. A significantly expanding EPO means one which meets the criteria of

40 CFR 122.29(b)(1)(i), (ii) and/or (iii); although, as discussed above, such facilities do not meet the definition of new source in 40 CFR 122.2.

4. EPOs which have liquid manure handling systems and/or unlimited continuous flow watering systems.

5. Facilities which adversely affect properties listed or eligible for listing in the National Register of Historical Places.

## F. Effluent Limitations

The following effluent limitations apply to EPOs covered under this general permit, and cover both the production and the land application areas under the control of the EPO:

1. *Production Areas:* There shall be no discharge of process wastewater pollutants to waters of the United States, except when a catastrophic rainfall event causes an overflow of process wastewater from a facility properly designed, constructed, maintained, and operated to contain:

- a. All process generated wastewater resulting from the operation of the EPO; plus,
- b. All runoff from a 25 year, 24-hour rainfall event for the location of the EPO.

2. There shall be no discharge of process wastewater pollutants from retention or control structures to groundwater that has a direct hydrologic connection to waters of the United States.

3. *Land Application Area:* For discharges associated with land application of process wastewater and/or manure under the control of the EPO operator, including discharges to groundwater that has a direct hydrologic connection to waters of the United States:

- a. The EPO must ensure that such activities comply with the requirements of Minimum Standard 9 (see section G.9, below).
- b. There shall be no discharge of manure and/or process wastewater from land application areas.

## G. Minimum Standards to Protect Water Quality in NPDES Permits for EPOs

Each of the following minimum standards is designed to achieve the objective of preventing discharge of pollutants to waters of the U.S. and from land application activities under the operational control of the EPO. Minimum requirements or portions of minimum requirements that must be implemented on the effective date of the permit are identified with an asterisk (\*).

### *1. Minimum Standard—Buffers or Equivalent Practices*

Provide and maintain buffer strips or other equivalent practices near the animal confinement areas, manure storage areas, and land application areas that are sufficient to minimize the discharge of pollutants to waters of the U.S. (e.g., soil erosion and manure and wastewater). These practices may include but are not limited to: residue management, conservation crop rotation, grassed waterways, strip cropping, vegetative buffers, terracing, and diversion.

### *2. Minimum Standard—Divert Clean Water*

\* Design and implement management practices to divert clean water and runoff waters from contact with the animal confinement areas; animal manure; or manure and/or process wastewater storage systems. Clean water and runoff waters includes rain falling on the roofs of facilities, runoff from adjacent land, or other sources.

### *3. Minimum Standard—Prevent Direct Contact of Animals With Waters of the U.S.*

\* Develop and implement appropriate controls to prevent direct access of animals in confinement to waters of the U.S. to protect water quality.

### *4. Minimum Standard—Animal Mortality*

\* Handle and dispose of dead animals in a manner that prevents contamination of surface waters of the U.S. (including contamination of groundwater with a direct hydrological connection to surface waters).

### *5. Minimum Standard—Chemical Disposal*

\* Prevent introduction of chemicals into manure and wastewater storage structures for purposes of disposal. Examples include pesticides, hazardous and toxic chemicals, and petroleum products/by-products.

### *6. Minimum Standard—Proper Operation and Maintenance*

\* Implement an operation and maintenance program to minimize the discharges of pollutants to surface water and groundwater that is hydrologically connected to surface water that involves periodic visual inspection and maintenance of all manure storage and handling equipment and structures and all runoff management devices (e.g., cleaning separators, barnyards, catch basins, screens, annual testing and calibration of land application

equipment to ensure proper application rates and maintenance of filter strips).

### *7. Minimum Standard—Recordkeeping and Testing*

\* Maintain a log that documents the visual inspections, findings, preventative maintenance, testing, and calibration that has been performed.

\* Document the date, rate, location, types of crops, and methods used for application of manure and wastewater, as well as other nutrients, to land under the control of the EPO operator.

Where manure and wastewater are not applied on land under the operational control of the EPO operator, maintain a record of the transfer of the manure off-site.

\* Record the results of annual manure and wastewater sampling to determine nutrient content.

\* Record the results of representative soil sampling and analyses conducted at least every three years to determine nutrient content.

### *8. Minimum Standard—Maintain Proper Storage Capacity*

\* Maintain sufficient freeboard in liquid manure/wastewater storage structures to assure compliance with the permit conditions.

\* Store dry manure in production buildings or in storage facilities or in another as to prevent polluted runoff, (e.g. located on relatively flat land, away from waterbodies, wetlands and wells, and/or surrounded by a berm or buffer).

Provide adequate storage capacity so that land application occurs only during periods when land or weather conditions are suitable for manure and wastewater application (see Minimum Standard #9, below).

### *9. Minimum Standard—Rates and Timing of Land Application of Manure and Wastewater*

\* Land apply manure and/or wastewater in accordance with proper agricultural practices.

Land apply manure and/or wastewater in accordance with land application rates developed on a site-specific basis as needed to protect water quality. At a minimum, land application rates should (1) prevent application of nutrients at rates that will exceed the capacity of the soil and the planned crops to assimilate nutrients and minimize water pollution; and (2) be quantified and based on the most limiting nutrient in the soil (e.g., phosphorus or nitrogen), type of crop, realistic crop yields, soil type, and all nutrient inputs in addition to those from manure and wastewater.

Incorporate manure applied to the bare soil surface within 24 hours after land application.

\* Land application of manure and/or wastewater is prohibited on land that is flooded, saturated with water, frozen or snow covered (unless approved conservation measures of a certified CNMP are in place to prevent off-site movement of contaminated water) at the time of land application where the manure and/or wastewater may enter waters of the U.S.

\* Land application of manure and/or wastewater is prohibited on land with slopes greater than 6 per cent unless approved conservation measures of a certified CNMP are in place to prevent off-site movement of contaminated water.

\* Land application of manure and/or wastewater is prohibited during the period of November 15 through April 15 on land with slopes greater than 3 per cent unless approved conservation measures of a certified CNMP are in place to prevent off-site movement of contaminated water.

\* Land application of manure and/or wastewater is prohibited during rainfall events and for 24 hours prior to a 60 per cent forecasted rainfall event of 1/4 inch or more.

## **H. Comprehensive Nutrient Management Plan (CNMP)**

### *1. Elements of a CNMP*

Each EPO covered by this permit shall develop and implement a site-specific CNMP that includes the following elements as appropriate to the needs and circumstances of the permitted facility: animal outputs; manure handling and storage; land application of manure and wastewater; site management; record keeping; and other manure and/or wastewater utilization options. The CNMP must be developed and implemented to meet all of the Minimum Standards to Protect Water Quality that are applicable to the permitted facility. The CNMP must be developed and implemented to meet the requirements of the CWA, current State and U.S. Department of Agriculture-Natural Resources Conservation Service (NRCS) technical standards and NRCS's CNMP Technical guidance.

### *2. Schedule for Developing, Submitting, and Implementing a CNMP*

a. For existing EPO facilities—Following the submission of the NOI, any existing EPO covered by this NPDES general permit shall develop and implement a CNMP no later than 2 years after the effective date of this general permit. The permittee must

notify the permitting authority in writing within thirty days following the completed development of the site-specific CNMP.

b. For EPO facilities constructed after the effective date of this permit—New EPOs must have developed a CNMP at least 180 days prior to commencement of operation.

c. For existing EPOs having significant expansions, constructed after the effective date of this permit, a CNMP (or revised CNMP) addressing the expansion must be developed at least 180 days prior to commencement of operation of the expansion.

## I. Management Practices

1. *Emergency Discharge Impact Abatement:* Authorized discharges (see section F, Effluent Limitations, above) must, where practicable, be released to vegetated fields for filtering or captured in secondary containment to minimize discharge to waters of U.S.

2. *Irrigation Control:* Irrigation systems shall be managed so as to reduce or minimize: (1) Ponding or puddling of wastewater on land application fields; and (2) contamination of ground and surface water.

3. *Spills:* Appropriate measures necessary to prevent spills and to clean up spills of any toxic and other pollutants shall be taken. If possible spills are anticipated, materials handling procedures and storage must be specified in the CNMP. Procedures for cleaning up spills shall be identified, and the necessary equipment to implement clean up shall be made available to facility personnel. All spills resulting in actual or potential to discharge to waters of the U.S. must be reported to EPA and State/Indian Tribe authorities.

4. *Measurement of Rainfall:* A rain gauge meeting National Weather Service standards or its equivalent shall be kept on site of all EPOs which collect egg wash wastewater in uncovered lagoons or basins or which practice land application of manure or egg wash wastewater. A log of all measurable rainfall events shall be kept by the EPO operator/owner.

5. *Liner Requirement:* Where a direct hydrologic connection through ground water exists, the ponds, lagoons and basins of the retention structure must have a liner which will prevent the potential contamination of surface waters.

6. *Employee Training:* Where employees are responsible for work activities which relate to permit compliance, those employees must be regularly trained or informed of any

information pertinent to the proper operation and maintenance of the facility and waste disposal. Training shall include topics as appropriate such as land application of wastes, proper operation and maintenance of the facility, good housekeeping and material management practices, necessary record-keeping requirements, and spill response and clean up. The permittee is responsible for determining the appropriate training frequency for different levels of personnel and the CNMP shall identify periodic dates for such training. This training program must also be included in the EMS.

7. *Chemical Handling:* The owner/operator shall prevent the discharge of pesticide-contaminated waters into retention structures. All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the management of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent pollutants from entering the retention structures or waters of the United States.

8. *Discharges of Chemicals to Containment Structures:* All discharges to containment structures shall be composed entirely of wastewater from the proper operation and maintenance of an EPO and the precipitation runoff from the EPO areas. The disposal of any materials (other than materials and discharges associated with proper operation and maintenance of the EPO) into the containment structures is prohibited by this permit.

9. *Siting and Structural Integrity:* Site and construct new facilities so as to comply with applicable State and/or local requirements. In the absence of applicable State and/or local requirements, new facilities must be constructed to meet NRCS, ASCS, or equivalent engineering and construction standards. Existing facilities must be checked and maintained to ensure their structural integrity, and that they are appropriately sized for egg-producing operations.

10. *Facility Closure:* The following conditions shall apply to the closure of egg washing storage structures and other litter and wastewater facilities:

### a. Closure of Egg Washing Wastewater Storage Structures

No egg washing wastewater storage structure shall be permanently abandoned without proper closure.

Egg washing wastewater storage structures shall be maintained at all times until closed in compliance with this section.

Egg washing wastewater storage structures must be properly closed if the permittee ceases operation. In addition,

any egg washing wastewater storage structure that is not in use for a period of twelve consecutive months must be properly closed unless the facility is financially viable, intends to resume use of the structure at a later date, and either: (1) maintains the structure as though it were actively in use, to prevent compromise of structural integrity; or (2) removes manure and wastewater to a depth of one foot or less and maintains a depth of wastewater sufficient to preserve the integrity of the synthetic or earthen liner. In either case, the permittee shall notify the EPA of the action taken, and shall conduct routine inspections, maintenance, and record-keeping as though the structure were in use. Prior to restoration of use of the structure, the permittee shall notify the EPA and provide the opportunity for inspection.

All closure of lagoons and other earthen or synthetic lined basins must be consistent with NRCS standards (currently, Field Technical Guide No. 998, Interim Standard for Closure of Abandoned Waste Treatment Lagoons and Waste Storage Ponds). Consistent with NRCS standards, the permittee shall remove all waste materials to the maximum extent practicable and dispose of them in accordance with the permittee's CNMP, unless otherwise authorized by the EPA. If the permittee plans to land apply lagoon sludge, the CNMP should have special conditions for such application based on the most limiting contaminant in the waste.

Unless otherwise authorized by the EPA, completion of closure for egg washing wastewater storage structures shall occur as promptly as practicable after the permittee ceases to operate or, if the permittee has not ceased operations, 12 months from the date on which the use of the structure ceased, unless the lagoons or basins are being maintained for possible future use in accordance with the requirements above.

### b. Closure Procedures for Manure and Other Wastewater Facilities

No manure or other wastewater control and retention structure shall be abandoned. Closure of all such structures shall occur as promptly as practicable after the permittee has ceased to operate, or, if the permittee has not ceased to operate, within 12 months after the date on which the use of the structure ceased. To close a manure or wastewater control and retention structure, the permittee shall remove all manure and wastewater and dispose of it in accordance with the permittee's CNMP, unless otherwise authorized by the EPA.

## Other Legal Requirements

### A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. Section 301(b)(1)(C) of the Act requires that NPDES permits contain conditions that ensure compliance with applicable state water quality standards or limitations. The proposed permit contains limitations and requirements intended to ensure compliance with state water quality standards and has been determined by EPA Region 6 to be consistent with the applicable state's water quality standards and the corresponding implementation plans. The Region has solicited certification from the States of New Mexico, Oklahoma, and the Pueblos of Acoma, Isleta, Nambe, Picuris, Pojoaque, Sandia, San Juan, Santa Clara, and Tesuque.

### B. Endangered Species Act

EPA Region 6 has determined that issuance of this general permit is unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA made this determination for the following reasons:

The permit specifically excludes operations having either continuous overflow watering or liquid manure handling. EPOs covered by this permit must comply with the permit requirements which include a prohibition on discharges of process wastewater pollutants except during catastrophic rainfall events from properly designed, constructed, maintained and operated facilities. Discharges during chronic rainfall events are prohibited. These EPOs will also be subject to the numerous other requirements designed to assure proper operation of the animal confinement areas, storage facilities and unloading/handling areas of manure or egg wash water. Additionally, the permit requirements will assure that manure and wastewater is properly applied at an agronomic rate to minimize the contamination of rainwater falling on the land application site. EPOs covered by this permit will be subject to the additional requirement to implement a multi-media environmental management system that controls a range of environmental impacts, including those not subject to regulation under the Clean Water Act, such as odor and pest control.

EPA is seeking written concurrence from the United States Fish and Wildlife Service on this determination.

### C. Historic Preservation Act

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historical Places are not authorized to discharge under this permit.

### D. Economic Impact (Executive Order 12866)

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this general permit is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

### E. Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040-0086 (NPDES permit application) and 2040-0004 (discharge monitoring reports).

### F. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. As discussed below, the permit being proposed to be reissued is not a "rule" subject to the Regulatory Flexibility Act. EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Coastal

Subcategory guidelines on which many of the permit's effluent limitations are based. That analysis shows that compliance with the permit requirements will not result in a significant impact on dischargers, including small businesses, covered by these permits. EPA Region 6 therefore concludes that the permits proposed today will not have a significant impact on a substantial number of small entities.

### G. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104-4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, e.g., UMRA section 201, "Each agency shall \* \* \* assess the effects of Federal regulatory actions \* \* \* (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to section 658 of Title 2 of the U.S. Code, which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act (APA), or any other law \* \* \*".

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

EPA thinks it is unlikely that this proposed permit issuance would contain a Federal requirement that might result in expenditures of \$100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. The Agency also believes that the proposed permit issuance would not significantly nor uniquely affect small governments. For UMRA purposes, "small governments" is defined by reference to the definition of "small governmental jurisdiction" under the RFA. (See UMRA section 102(1), referencing 2

U.S.C. 658, which references section 601(5) of the RFA.) "Small governmental jurisdiction" means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition. The proposed permit issuance also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit.

Dated: September 26, 2001.

**Sam Becker,**

*Acting Director, Water Quality Protection Division, Region 6.*

[FR Doc. 01-24904 Filed 10-3-01; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collections Approved by Office of Management and Budget

September 28, 2001.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418-1379.

Federal Communications Commission

*OMB Control No.:* 3060-0355.

*Expiration Date:* 07/31/2004.

*Title:* Rate of Return Reports.

*Form No.:* FCC Forms 492 and 492A.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 113 respondents; 8 hours per response (avg.); 904 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* \$0.

*Frequency of Response:* On occasion, Annually, Recordkeeping.

*Description:* Section 65.600 of the FCC Rules requires filing of FCC Form 492 and FCC Form 492A. Filing of the FCC Form 492 on an annual basis is required from each local exchange carrier or group of affiliated carriers, which is not subject to sections 61.41 through 61.49 of the Commission's Rules and which has filed individual

access tariffs during the enforcement period. Each local exchange carrier or group of affiliated carriers subject to the previously stated sections shall file the FCC Form 492A report with the Commission for the calendar year. These carriers are also required to file within 15 months after the end of each calendar year a report reflecting any corrections or modifications. The forms are necessary to enable the Commission to monitor the access tariffs and price-cap earnings, and to enforce rate-of-return prescriptions. A copy of each report must be retained in the principal office of the respondent and shall be filed in such manner as to be readily available for reference and inspection. The data are used by staff members for enforcement purposes and by the public in analyzing the industry. The reports are also used by the Commission in the tariff review process and provide both the Commission and the carriers with an early warning system if rate adjustments are necessary to correct significant targeting errors. Copies of the forms and instructions may be downloaded from the Commission's forms Web page ([www.fcc.gov/formpage.html](http://www.fcc.gov/formpage.html)). Copies may also be obtained by either writing to the Commission's Forms Distribution Center, 9300 E. Hampton Drive, Capital Heights, Maryland 20431, or by calling telephone number 1-800-418-3676 and leaving a request on the answering machine provided for this purpose. Obligation to respond: Mandatory.

*OMB Control No.:* 3060-0814.

*Expiration Date:* 03/31/2002.

*Title:* Section 54.301, Local Switching Support and Local Switching Support Data Collection form and Instructions.

*Form No.:* N/A.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 195 respondents; 19.4 hours per response (avg.); 3787 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* \$0.

*Frequency of Response:* On occasion; Annually; Third Party Disclosure; Recordkeeping.

*Description:* The Telecommunications Act of 1996 (1996 Act) directed the Commission to initiate a rulemaking to reform our system of universal service so that universal service is preserved and advanced as markets move toward competition. To fulfill that mandate, on March 8, 1996, the Commission adopted a Notice of Proposed Rulemaking (NPRM) in CC Docket No. 96-45 to implement the congressional directives set out in section 254 of the Communications Act of 1934, as amended by the 1996 Act. On May 8, 1997, the Commission released the

Report and Order on Universal Service (Universal Service Order) in CC Docket 96-45 that established new federal universal service support mechanisms consistent with the universal service provisions of section 254. In the Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72 (adopted December 30, 1997, released December 30, 1997), the Commission reconsidered certain aspects of the Universal Service Order. Among other things, the Fourth Order on Reconsideration adopted a precise methodology for the universal service administrator to use in calculating the average unseparated local switching revenue requirement. Pursuant to 47 CFR section 54.301(a) through (e)—Local Switching Support, each incumbent local exchange carrier that is not a member of the NECA Common Line tariff that has been designed an eligible telecommunications carrier, and that serves a study area with 50,000 or fewer access lines shall, for each study area, must provide the Administrator with the projected total unseparated dollar amount assigned to each account in section 54.301(b). Pursuant to 47 CFR 54.301(a) through (f)—Local switching support, each incumbent local exchange carrier that is not a member of the NECA Common Line tariff, that is an average schedule company, that has been designated an eligible telecommunications carrier, and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the total number of access lines, total number of central offices, and projected access minutes. This information is necessary so that the universal service administrator may comply with section 54.301(f) of the Commission's rules. Section 54.301(f) provides that, consistent with the Commission's treatment of average schedule companies, the universal service administrator should develop "a formula that simulates the disbursements that would be received pursuant to this section by a company that is representative of average schedule companies." 47 CFR 54.301(f). Carriers are required to file true up data. See 47 CFR 54.301(e). Carriers must file this information within 12 months after the initial report. The universal service administrator, USAC, has developed a form to collect the information specified in the Commission's rules. Copies of the forms and instructions may be obtained from the Administrator by calling 202-776-0200. Copies of the form and instructions may also be downloaded