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C. When Does This Rule Take Effect?

Because this rule provides temporary relief from permitting requirements for certain dischargers, this rule is not subject to the general requirement for a thirty-day waiting period after publication before a final rule takes effect. 5 U.S.C. 553(d)(1). Moreover, pursuant to 5 U.S.C. 553(d)(3), EPA has good cause to make this rule effective immediately. The March 10, 2003, deadline this action extends is less than thirty days after the publication of this rule. Making this action effective as soon as it's published will help reduce any confusion by those affected by the rule regarding the necessity for obtaining permit coverage. EPA is aware of no reason why those directly affected by this rule would need, or want, a waiting period before this action becomes effective. Therefore, a thirty-day waiting period is unnecessary and would be contrary to the public interest.

II. Background

On December 30, 2002, EPA proposed a two-year postponement of the permit requirement for oil and gas construction activity disturbing one to five acres from March 10, 2003, to March 10, 2005, in order to allow time for EPA to analyze and better evaluate (1) The impact of the permit requirements on the oil and gas industry, (2) the appropriate best management practices for preventing contamination of storm water runoff resulting from construction associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities, and (3) the scope and effect of 33 U.S.C. 1342 (l)(2) and other storm water provisions of the Clean Water Act. In that proposal, EPA explained the background of the NPDES construction permit requirements, and why EPA believes it is appropriate to provide a two-year postponement of permit requirements for construction of oil and gas exploration and production facilities disturbing one to five acres. When describing construction activity that disturbs "one to five acres," or in discussing "small" construction activity in this preamble, EPA is referring to activities covered by 40 CFR 122.26(b)(15).

III. Response to Comments

EPA received numerous comments on both the proposal to postpone permit requirements for small oil and gas construction and the proposed construction general permit (CGP). The proposed CGP is available in the official public docket referenced in the Notice of Availability for Comment for the Proposed CGP at 67 FR 78116 (December 20, 2002). Comments on specific aspects of the CGP will be addressed in the fact sheet that will accompany the final permit. EPA's responses to all the comments received on the proposed rule are available in the Response to Comment document that is part of the docket for this final rule. EPA's responses to many of the principal issues raised on the proposed rule are discussed below.

Difference Between Oil and Gas and Other Construction

A number of commenters opposed the two-year postponement, asserting that there is no reason to treat construction at oil and gas sites differently than other types of construction. EPA agrees that sediment from all sources is a concern but believes that the oil and gas industry has raised significant questions about the differences between the nature of construction at oil and gas sites and

other types of construction. One such difference is the very short time window in which construction at oil and gas sites usually occurs. Most of the studies that EPA relied on to show the need for regulating small construction activity looked at residential or commercial construction. It is important for EPA to determine whether construction at oil and gas sites is sufficiently different from these other types of construction to warrant different regulatory treatment. EPA has decided to postpone permitting requirements for small construction at oil and gas sites for two years so that there is adequate time for all the affected parties to provide information and help us determine how to best ensure that such construction does not cause sediment and erosion problems and that these sites are not subject to inappropriate requirements. Also, as reflected in the proposal, EPA plans to use this time to assess the scope of 33 U.S.C. 1342(l)(2) and other storm water provisions of the Clean Water Act with regard to storm water discharges caused by this industry.

Environmental Impact

EPA received conflicting comments on the environmental impact of oil and gas activity. Some commenters claimed that there was no evidence of negative environmental impacts associated with oil and gas activities. Other commenters asserted that oil and gas projects frequently involved logging, grading, and road building, and that these activities were conducted without erosion and sediment controls and were therefore the source of large amounts of sediment deposition. As discussed above, EPA believes the two-year postponement will provide time to evaluate these opposing assertions.

Several commenters asserted that their State currently requires erosion and sediment (E&S) controls and for oil and gas operators therefore an NPDES permit is unnecessary. Other commenters indicated that oil and gas construction activity in their area occurred without any E&S controls. EPA is aware that some States have good E&S programs in place, and that other States do not. During the two-year postponement, EPA will evaluate State E&S controls related to oil and gas construction activity in comparison to requirements that would be imposed through an NPDES permit.

Economic Impact

A number of commenters asserted that EPA did not perform an economic analysis on the Phase II rule's effect on oil and gas, the national economy, and small businesses. EPA published an