

determination regarding the general permit reissuance. If the determination is substantially unchanged from those announced by this notice, the Administrator will so notify all persons submitting written comments. If the determination is substantially changed, the Administrator may issue a public notice indicating the revised determination.

A formal hearing is available to challenge any NPDES permit issued according to the regulations at 40 CFR 124.15, except for a general permit as cited by 40 CFR 124.71. Within 120 days following notice of EPA's final decision for the general permit under 40 CFR 124.15, any interested person may appeal the permit in the Federal Court of Appeals in accordance with section 509(b)(1) of the CWA. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or apply for an individual permit as specified at 40 CFR 122.21, as authorized at 40 CFR 122.28, and then request a formal hearing on the issuance or denial of an individual permit.

II. Background

A. Statutory and Regulatory History

Section 405 of the Water Quality Act of 1987 added section 402(p) to the CWA, which directed the EPA to develop a phased approach to regulate the storm water discharges under the National Pollutant Discharge Elimination System (NPDES) program. EPA published a final regulation on the first phase of this program on November 16, 1990, establishing permit application requirements for "storm water discharges associated with industrial activity." Construction activities that disturb at least five acres of land or are part of a larger plan of development and have point source discharges to waters of the U.S., are defined in 40 CFR 122.26(b)(14)(x) as an "industrial activity." Upon the advent of the Phase II storm water regulations, these activities became referred to as large construction activities.

Phase II of the storm water program was published in the **Federal Register** on December 8, 1999. Phase II includes sites disturbing at least one acre of land and less than five acres, as well as sites less than one acre of land area that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction

activity is defined at 40 CFR 122.26(b)(15)(i).

B. Significant Changes From the 1998 General Permit and the Subsequent 2000 Modification

1. The organization and numbering of the permit has been changed from the March 1998 (63 FR 15622) permit and the April 2000 (64 FR 25122) permit modification to mirror the organization and numbering of the national permit issued by various other EPA regions in the July 2003 **Federal Register** (68 FR 39087). This change also will support the use of the NOI form used to apply for coverage under the general permit. The NOI directs the applicant to certain sections of the permit. Therefore, it is imperative that the permit sections cited correspond to the topics referenced in the NOI.

2. Coverage for discharges from small construction activities has been added to the eligibility provisions.

3. The eligibility conditions were clarified regarding facilities discharging to water bodies with Total Maximum Daily Loads (TMDLs).

4. Waivers have been added for qualifying discharges from small construction activities.

5. The permit coverage area has been changed. Today's proposed reissuance no longer covers facilities on non-Indian lands in the State of Florida. It does continue to cover facilities on Indian Country lands within the States of Alabama, Florida, Mississippi and North Carolina.

6. The NOI has been changed from the previous permit. See page 78118 of the December 20, 2002, **Federal Register** (67 FR 78116) for a detailed discussion on the changes.

C. Summary of Terms and Conditions of the Proposed General Permit

1. Discharges Covered

Operators of large, five acres and greater, and small, one acre to less than five acres, construction activities on Indian Country lands within the States of Alabama, Florida, Mississippi and North Carolina may be eligible to obtain coverage under this permit for allowable storm water and non-storm water discharges specifically listed in the permit.

2. Limitations on Coverage

The proposed general permit retains the eligibility restrictions from the previous permit. The permit does not regulate post-construction discharges, storm water discharges commingled with non-storm water discharges, except as noted below, discharges previously

covered by another NPDES, discharges which cause or contribute to a violation of a water quality standard, discharges which adversely affect threatened or endangered species or their critical habitat, or discharges which adversely affect a listed or proposed to be listed historic place or resource. In addition, the permit includes a new restriction on discharges of storm water to waters for which a TMDL has been developed. Discharges of storm water from large and small construction activities that do not meet the eligibility requirements of the proposed general permit would be required to submit an individual permit application.

3. Deadlines and Permit Application Process

To obtain discharge authorization under the proposed general permit, dischargers must submit an NOI, which requires basic information about the facility owner/operator, location and discharge(s). NOI due dates, for construction activities on Indian lands in Alabama, Florida, Mississippi and North Carolina, are as follows:

- i. Ongoing construction activities previously covered by an NPDES permit, must submit an NOI within 60 days of the effective date of this permit.
- ii. New construction activities, after the effective date of this permit, must submit an NOI at least 48 hours prior to the commencement of any construction activity (e.g., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities).

4. Storm Water Pollution Prevention Plans

The proposed general permit requires operators covered by the permit to develop and implement a SWPPP. All SWPPPs must be developed in accordance with sound engineering practices and developed specific to the site. The SWPPP must be prepared prior to submission of the NOI.

III. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action in "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: (1) 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