been addressed in this second external review draft document. The draft ''Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Environmental Criteria; Second External Review Draft'' and the draft ''Risk and Exposure Assessment for the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur'' will be discussed by CASAC at a public peer review meeting on October 1–2, 2008; public comments that have been received prior to the public meeting will be provided to the CASAC review panel.

II. How To Submit Technical Comments to the Docket at www.regulations.gov

Submit your comments, identified by Docket ID No. Docket ID EPA–HQ–OAR–2007–1145 by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax: 202–566–9744.*
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–1145. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late'', and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hardcopy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: September 23, 2008.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E8–22798 Filed 9–26–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8720–7; EPA–HQ–OW–2005–0007]

Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Industrial Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA Regions 1, 2, 3, 5, 6, 9, and 10 today are finalizing EPA's NPDES general permit for stormwater discharges from industrial activity, also referred to as the Multi-Sector General Permit (MSGP). The MSGP consists of thirty four (34) separate Regional EPA permits that may vary from each other based on State or Tribal water quality-based requirements. This permit replaces the existing permits that expired on October 30, 2005. As with the earlier permits, this permit authorizes the discharge of stormwater associated with industrial activities in accordance with the terms and conditions described therein. Industrial dischargers have the choice to seek coverage under an individual permit. An individual permit may be necessary if the discharger cannot meet the terms and conditions or eligibility requirements in the permit.

DATES: This permit is effective today, September 29, 2008. This effective date is necessary to provide dischargers with the immediate opportunity to comply with Clean Water Act requirements in light of the expiration of the MSGP 2000 on October 30, 2005. In accordance with 40 CFR Part 23, this permit shall be considered issued for the purpose of judicial review on October 13, 2008. Under section 509(b) of the Clean Water Act, judicial review of this general permit can be had by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of notices of intent are provided in Part 1.4 of the MSGP. This permit also provides additional dates for compliance with the terms of these permits.

EPA will host a Web cast presentation on Wednesday, November 5 from 12 noon to 2 p.m. (Eastern Standard Time) to explain the new permit requirements.

Registration information will be available on *http://www.epa.gov/npdes/training* two weeks before the Web cast.

FOR FURTHER INFORMATION CONTACT: For further information on this final NPDES general permit, contact the appropriate EPA Regional Office listed in section I.D, contact Greg Schaner, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202–564–0721, or send questions via e-mail to EPA's stormwater permit mailbox: *SWpermit@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Final Permit Apply To Me?

If a discharger chooses to seek coverage under this MSGP to be authorized to discharge stormwater from industrial activities, the MSGP provides specific requirements for preventing contamination of stormwater discharges from industrial facilities listed in the sectors shown below:

Sector A—Timber Products.
Sector B—Paper and Allied Products Manufacturing.
Sector C—Chemical and Allied Products Manufacturing.
Sector D—Asphalt Paving and Roofing Materials Manufactures and Lubrican Manufacturers.
Sector E—Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing.
Sector F—Primary Metals.
Sector G—Metal Mining (Ore Mining and Dressing).
Sector H—Coal Mines and Coal Mining-Related Facilities.
Sector I—Oil and Gas Extraction and Refining.
Sector J—Mineral Mining and Dressing.
Sector K—Hazardous Waste Treatment Storage or Disposal.
Sector L—Landfills and Land Application Sites.
Sector M—Automobile Salvage Yards.
Sector N—Scrap Recycling Facilities.
Sector O—Steam Electric Generating Facilities.
Sector P—Land Transportation.
Sector Q—Water Transportation.
Sector R—Ship and Boat Building or Repairing Yards.
Sector S—Air Transportation Facilities.
Sector T—Treatment Works.
Sector U—Food and Kindred Products.
Sector V—Textile Mills, Apparel, and other Fabric Products Manufacturing.
Sector W—Furniture and Fixtures.
Sector X—Printing and Publishing.
Sector Y—Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries.
Sector Z—Leather Tanning and Finishing.
Sector AA—Fabricated Metal Products.
Sector AB—Transportation Equipment, Industrial or Commercial Machinery.
Sector AC—Electronic, Electrical, Photographic and Optical Goods.
Sector AD—Reserved for Facilities Not Covered Under Other Sectors and Designated by the Director.

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

1. Docket. EPA has established an official public docket for this action under Docket ID No. OW–2005–0007. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Publicly available docket materials are available in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

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

Electronic versions of the final permit and fact sheet are available at EPA's Web site *http://www.epa.gov/npdes/stormwater/msgp.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.regulations.gov/fdmspublic/component/main* view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search'', then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1.

Response to public comments. EPA received 92 comments on the proposed permit from industry (52), government (20), and the public (20). EPA has responded to all significant comments received and has included these responses in a separate document in the public docket for this permit. See the document titled *Proposed MSGP: EPA's Response to Public Comments.*

C. Public Meeting

EPA held an informal public meeting at EPA headquarters in Washington, DC, on December 20, 2005. The public meeting was attended by a wide variety of stakeholders including representatives from industry, government agencies, and environmental organizations. The public meeting included a presentation covering the major provisions of the proposed permit and a question and answer session. The presentation can be found in the public docket for this permit.

D. Who Are the EPA Regional Contacts for This Permit?

For EPA Region 1, contact Thelma Murphy at tel.: (617) 918–1615 or e-mail at *murphy.thelma@epa.gov.*
For EPA Region 2, contact Stephen Venezia at tel.: (212) 637–3856 or e-mail at *venezia.stephen@epa.gov* or for Puerto Rico, Sergio Bosques at tel.: (787) 977–5838 or e-mail at bosques.sergio@epa.gov.
For EPA Region 3, contact Garrison Miller at tel.: (215) 814–5745 or e-mail at *miller.garrison@epa.gov.*
For EPA Region 5, contact Brian Bell at tel.: (312) 886–0981 or e-mail at *bell.brianc@epa.gov.*
For EPA Region 6, contact Brent Larsen at tel.: (214) 665–7523 or e-mail at: *larsen.brent@epa.gov.*
For EPA Region 9, contact Eugene Bromley at tel.: (415) 972–3510 or e-mail at *bromley.eugene@epa.gov.*
For EPA Region 10, contact Misha Vakoc at tel.: (206) 553–6650 or e-mail at *vakoc.misha@epa.gov.*

II. Background

Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA), which directed the Environmental Protection Agency (EPA) to develop a phased approach to regulate stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) program. EPA published a final regulation on the first phase on this program on November 16, 1990,

establishing permit application requirements for ''stormwater discharges associated with industrial activity.'' See 55 FR 48063. EPA defined the term ''stormwater discharge associated with industrial activity'' in a comprehensive manner to cover a wide variety of facilities. See 40 CFR 122.26(b)(14). EPA is issuing the MSGP under this statutory and regulatory authority.

Dischargers choosing to be covered by the MSGP must certify in their notice of intent (NOI) that they meet the requisite eligibility requirements, described in Part 1 of the permit. In addition, dischargers must install and implement control measures to meet the effluent limits required in Part 2 and develop a stormwater pollution prevention plan (SWPPP) consistent with Part 5 describing their control measures used to achieve the effluent limits. Under the MSGP, a facility is required to take corrective action (Part 3) to modify or replace control measures in order to eliminate certain unauthorized releases, or conditions giving rise to violations of effluent limits or exceedances above applicable water quality standards. Facilities are also required to conduct quarterly site inspections (Part 4.1), quarterly visual assessments of the stormwater discharge (Part 4.2), and annual comprehensive site inspections (Part 4.3). Permitted facilities are required to submit to EPA quarterly benchmark monitoring results (Part 6.2.1), and, where applicable, stormwater effluent data relating to impaired waters (Part 6.2.4) and compliance with numeric effluent limitations guidelines (Part 6.2.2). EPA notes that Part 6.2.1 emphasizes that the benchmark thresholds used for monitoring are not effluent limits, but rather information that is primarily for the use of the industrial facility to determine the overall effectiveness of the control measures and to assist in understanding when corrective action(s) may be necessary. In addition, permittees are required to submit an annual report that includes the findings of the facility's comprehensive site inspection and a summary of any corrective actions required during the past year.

III. Scope and Applicability of the Multi-Sector General Permit

The MSGP 2000 expired at midnight, October 30, 2005. Dischargers that were previously covered by the MSGP 2000 have been covered by an administrative continuance in the interim period until they are authorized for coverage under this permit.

A. Geographic Coverage

This permit provides coverage for sectors of industrial point source discharges that occur in areas not covered by an approved State NPDES program. The geographic coverage of this permit is listed in Appendix C of this permit. EPA notes that unlike the MSGP 2000, facilities located in Regions 4 and 8 will not be covered by this permit because they are issuing their own NPDES general permit. EPA also notes that because certifications required by section 401 of the Clean Water Act were not received in time, coverage under this permit is not yet available in the following areas:

- The State of Alaska, except Indian Country lands;
- The State of Idaho, except Indian Country lands;
- Indian Country lands within the State of Idaho, except Duck Valley Reservation lands;
- Indian Country lands within the State of Oregon, except Fort McDermitt Reservation lands;
- Indian Country lands within the State of Washington; and
- Federal facilities in the State of Washington, except those located on Indian Country lands.

EPA will announce the availability of coverage under the MSGP for these areas in a separate **Federal Register** notice as soon as possible after the certifications are completed.

B. Categories of Facilities Covered

This permit regulates stormwater discharges from industrial facilities in 29 sectors, as shown above in section I.A., in the five states and other areas (e.g., federal facilities, Indian Country lands, and U.S. territories) where EPA remains the permitting authority. See Appendix D of the final MSGP and the MSGP fact sheet for more complete information.

C. Summary of Significant Changes from 2000 Multi-Sector General Permit

This permit replaces the MSGP 2000 that was issued for a five-year term on October 30, 2000 (65 FR 64746). The MSGP 2000 was subsequently corrected on January 9, 2001 (66 FR 1675–1678) and March 23, 2001 (66 FR 16233–16237). On April 16, 2001 (66 FR 19483–19485), EPA re-issued the permit, as corrected, for facilities in certain areas of Regions 8 and 10.

This permit is structured in nine parts: General requirements that apply to all facilities (e.g., eligibility of discharges, effluent limitations, storm water pollution prevention plan (SWPPP) requirements, monitoring and reporting requirements (Parts 1–7)), industrial sector-specific conditions (Part 8), and specific requirements applicable to facilities within individual States or on Indian Country lands (Part 9). Additionally, the appendices provide forms for the Notice of Intent (NOI), the Notice of Termination, the Conditional No Exposure Exclusion, and the annual report, as well as step-by-step procedures for determining eligibility with respect to protecting historic properties and endangered species, and for calculating site-specific, hardness-dependent benchmarks.

EPA made a number of changes to the permit from the MSGP 2000. These changes are summarized below and are discussed in more detail in the MSGP fact sheet.

Distinction Between Effluent Limits and SWPPP Requirements

The permit clearly distinguishes between the effluent limitations (or effluent limits) from the requirements relating to the development of the SWPPP. Effluent limits (in Part 2, and for select industrial sectors, in Part 8) are qualitative and quantitative control requirements to which all permittees are subject, while the SWPPP is a planning document that must be prepared by all facility operators that describes the site and the pollutants potentially discharged in stormwater, and documents the control measures selected, designed, installed, and implemented to meet the effluent limitations. Additionally, the SWPPP requirements were modified to separate the provisions required for the initial document developed prior to NOI submittal and the requirements for the additional documentation of actions taken (e.g., inspections, training, correction actions, etc.) during the permit term. Finally, the effluent limits themselves were reorganized to more clearly distinguish those that are technology-based from those that are water quality-based.

Discharge Authorization Time Frame

The waiting period for operators who have correctly completed and submitted their NOIs is 30 days (or, in some cases, 60 days) to provide for sufficient review by the Fish & Wildlife Service and/or the National Marine Fisheries Service to determine if the permit's authorization to a particular discharger raises any significant concerns with respect to any federally-listed species or critical habitat. During this period, the public may review this information as well. The waiting period begins after EPA posts the operator's NOI on the eNOI Web site. The duration of the waiting

period depends on when the operator commenced or proposes to commence discharging.

Electronic Systems for Submittal of Notices of Intent (NOIs), Water Locator Tool, and Reporting of Monitoring Data

EPA is launching an updated electronic system for submitting NOIs. This ''eNOI'' system is available to all operators, and can be accessed at *http://www.epa.gov/npdes/eNOI.* The system helps industrial operators fill in answers quickly and correctly, and should better facilitate an operator's coverage under the permit. EPA encourages all operators to use this system. Authorized permittees will be notified by email of their authorization and their specific monitoring requirements.

EPA has added a new web-based tool, the Water Locator, that will help operators determine their latitude and longitude, their receiving water, relevant total maximum daily loads (TMDLs), and pollutants of particular concern (i.e., those for which there is a specific criterion in the receiving water, and those for which a receiving water is impaired). The Water Locator can be accessed at *http://www.epa.gov/npdes/stormwater/msgp.*

In addition, operators will now be able to report all monitoring data electronically through the eNOI system. This system for electronic reporting will be available in the next 6 months. All electronic reporting will be through EPA's on-line eNOI system, available at *http://www.epa.gov/npdes/eNOI.* EPA has delayed implementation of required monitoring for 6 months to ensure that the electronic reporting system is ready when monitoring begins.

Information Required for Notices of Intent (NOIs)

This permit specifies the information that is required to be provided in NOIs so that EPA can determine whether any further water quality-based requirements are necessary and to enable the eNOI system to automatically inform the operator of its specific monitoring requirements. Operators are required to provide more specific information regarding their receiving waterbody, including whether the waterbody is impaired, and, if so, for which pollutant it is impaired and whether there is an approved or established TMDL for the waterbody, and whether the waterbody is designated by a State or Tribal Authority as Tier 2 or 2.5 for antidegradation purposes. The operator also needs to identify if it is a new discharger, the size of its property, and which effluent guidelines it is subject to (if any). In addition, to enhance protection of endangered species, if the operator is certifying eligibility under Criterion E of Appendix E, then he/she will need to provide additional information supporting this certification. In addition, the operator is asked to specify if its facility will be inactive and unstaffed during the permit term, and, if so, for how long.

Water Quality-Based Effluent Limits

The permit contains water quality-based effluent limits (WQBELs) to ensure that discharges are controlled as necessary to meet water quality standards in receiving waters.

- Discharges to Impaired Waters—The permit contains different requirements for new and existing dischargers and for those that are discharging to impaired waters with a completed total maximum daily load (TMDL) as compared to those without a TMDL. New dischargers are only eligible for discharge authorization if they document that either there is no exposure to stormwater of the pollutant for which the water is impaired at the site, or the impairment pollutant is not present at the operator's site, or that the discharge is not expected to cause or contribute to a water quality standards exceedance. For existing discharges to impaired waters with a completed TMDL, EPA will inform the operator of any additional effluent limits or controls that are necessary for the discharge to be consistent with the assumptions of any available wasteload allocation in the TMDL. The permittee is also required to monitor its discharge for any pollutant(s) for which the waterbody is impaired. For existing discharges to impaired waters without a completed TMDL, the permittee is required to control its discharge as necessary to meet water quality standards and to monitor for the pollutant(s) causing the impairment.
- Antidegradation Requirements—EPA has clarified how operators can meet antidegradation requirements in order to be authorized to discharge. If an NOI indicates that an operator is seeking coverage for a new discharge to a Tier 2 water (or a water considered to be a Tier 2.5 water), EPA will then determine if additional requirements are necessary to be consistent with the applicable antidegradation requirements, or if an individual permit application is necessary. Furthermore, operators are not eligible for coverage under this permit if they are discharging to waters designated by a State or Tribe as Tier 3 for antidegradation purposes.

Protection of Endangered Species

During EPA's consultation with the Fish & Wildlife Service and National Marine Fisheries Service (''the Services'') pursuant to section 7(a)(2) of the Endangered Species Act (ESA), modifications have been made to the directions provided to operators in Appendix E regarding steps that must be followed to properly certify eligibility under Part 1.1.4.5 (Endangered and Threatened Species and Critical Habitat Protection). In addition, certain benchmarks have been revised to provide greater protection to listed species. EPA revised the ammonia benchmark from 19 mg/L to 2.14 mg/L to provide a better indicator of the adverse impact to endangered mussel species. EPA selected this benchmark based on a level that is considered protective of mussel species in waters up to pH 8; it will also be protective of other species in waters with a pH up to 8.5.

Also, EPA adjusted the benchmarks for six hardness-dependent metals (i.e., silver, cadmium, lead, nickel, copper, and zinc) so that the benchmark concentrations are site-specific depending on the hardness levels in the receiving water. This change affects 12 sectors. Where a permittee is required to monitor for a hardness-dependent metal, he/she must first determine the hardness value of the receiving water. The benchmark concentration is then determined by comparing the table of hardness ranges (see Appendix J) to the actual, measured value for hardness in the receiving water. This change will provide better protection to some listed species and will further ensure that discharges do not cause or contribute to exceedances of water quality standards with numeric criteria expressed as hardness-dependent values.

Corrective Actions

This permit specifies corrective actions required of permittees. The provisions in Part 3 specify the types of conditions at the site that trigger corrective action requirements, what must be done to address such conditions and ensure that the permittee remains in compliance with the permit, or promptly returns to compliance in the case of violations, and the deadlines for completing corrective action. The permit also clarifies that not conducting required corrective action is a permit violation in and of itself, in addition to any underlying violation that may have triggered the requirement for corrective action. A summary of all corrective actions initiated and/or completed each year must be reported to EPA in the

annual comprehensive site inspection report.

Monitoring

Several of the changes made in this permit to the monitoring requirements of the MSGP 2000 are listed below.

• Inactive and unstaffed sites may exercise a waiver for benchmark monitoring and quarterly visual assessments as long as there are no industrial materials or activities exposed to stormwater at the sites. Because of the difficulty of accessing remote sites, operators of mining operations that are inactive and unstaffed may continue to exercise this waiver without demonstrating that its industrial materials or activities are not exposed to stormwater, but EPA may impose alternate, site-specific requirements where necessary for the protection of water quality standards.

• Unless subject to a waiver, or an alternative schedule for climates with irregular stormwater runoff, permittees must monitor quarterly during year 1 for benchmarks. Following 4 quarters of benchmark monitoring, if the average of the 4 monitoring values does not exceed the benchmark for that specific parameter, the permittee has fulfilled his/her benchmark monitoring requirements for that parameter for the permit term. If the average of the 4 quarters of monitoring values exceeds the benchmark, the permittee is required to perform corrective action and conduct an additional 4 quarters of monitoring, unless, the permittee determines (and documents in the SWPPP) that no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice to meet the effluent limits in Part 2 of the permit. If such a determination is made, the permittee may reduce monitoring for that pollutant to once-per-year for the duration of the permit term. At any time prior to completion of the first 4 quarters of monitoring, if the permittee determines that it is mathematically certain that his/her average after 4 quarters will exceed the benchmark (e.g., the sum of results to date exceeds 4 times the benchmark), the permittee must review its control measures and perform any required corrective action immediately (or document why no corrective action is required), without waiting for the full 4 quarters of monitoring data. If after the permittee has modified his/her control measures and conducted 4 additional quarters of monitoring, the average still exceeds the benchmark (or if an exceedance of the benchmark by the four quarter average is mathematically certain prior to conducting the full 4 additional quarters of monitoring), the permittee must again review his/her control measures and either resample an additional 4 times or document that no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice to meet the effluent limits in Part 2 of the permit.

• A permittee who discharges a pollutant causing an impairment to an impaired waterbody must monitor once-per-year for that pollutant during a stormwater event if there is no TMDL for the waterbody. Monitoring may be waived after one year if the pollutant was not detected in the sample and the permittee documents that the pollutant is not exposed to stormwater at the site. Monitoring may also be waived if the permittee documents that the presence of a pollutant of concern in its discharge is attributable to natural background pollutant levels in stormwater runoff, and not to the activities of the permittee. If the discharge is to a waterbody for which a TMDL has established a WLA applicable to the facility, EPA will inform the permittee of specific monitoring instructions, including the pollutant(s) for which monitoring is to be conducted and the required frequency.

• Follow-up monitoring requirements have been added when results indicate a permittee's discharge exceeds a numeric effluent limitation to verify that control measures have been modified to control the discharge as necessary to meet the effluent limit. If the follow-up monitoring also exceeds the limit, the permittee must submit an exceedance report to EPA within 30 days of receiving the analytical data, documenting the reason for the exceedance and the corrective action taken to eliminate it, including a corrective action schedule where applicable.

• EPA has added provisions enabling dischargers to avoid corrective action and subsequent monitoring requirements if the exceedance of a benchmark is attributable solely to natural background levels of that pollutant in stormwater runoff. In order to use this provision, the discharger must: (1) Have benchmark results that show pollutant levels are less than or equal to the concentration of that pollutant in the natural background; (2) document the supporting rationale for concluding that benchmark exceedances are attributable solely to natural background pollutant levels; and (3) notify EPA in the fourth benchmark monitoring report that benchmark exceedances are attributable solely to natural background pollutant levels.

Annual Report

Permittees are now required to submit to EPA an annual report that includes the findings from their annual comprehensive site inspection report and a summary of corrective actions required and taken during the reporting period. EPA has provided a recommended form for each permittee to use in filing its annual report. See Appendix I.

Industry Sector-Specific Requirements

The following key elements of the permit are included in Part 8, which describes requirements specific to particular industry sectors:

• For many sectors, general requirements to address pollutant discharges from materials handling areas, fueling areas, etc. were consolidated in the technology-based effluent limits in Part 2.1 that are applicable to all sectors.

• Mining Sectors G, H, and J—The permit now specifically includes coverage for construction and exploration activities under this permit, where in the past those activities were required to be covered separately under the Construction General Permit (CGP). To facilitate such coverage, additional requirements have been added regarding site map preparation; management, inspection, maintenance, and cessation of clearing, grading, and excavation activities; monitoring frequency; and temporary and final stabilization. These new requirements largely mirror those in the CGP for these activities. The scope of coverage has also been clarified, and an exception provided to the requirement that inactive and unstaffed sites have no industrial materials or activities exposed to stormwater in order to exercise applicable monitoring and inspection waivers.

• Sector P—Text has been added to include illicit plumbing connections among the potential pollutant sources addressed, and a requirement has been added to document specific good housekeeping control measures used in each of the facility areas.

• Sector S—Requirements have been added emphasizing control measures, facility inspections, good housekeeping, vehicle and equipment washwater, and monitoring during the deicing season and for implementing controls to collect or contain contaminated melt water from collection areas used for disposal of contaminated snow.

• Sector AC—Electrical and electronic equipment and components has been added as a new subsector.

D. Permit Appeal Procedures

In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on October 13, 2008. Under section 509(b) of the Clean Water Act, judicial review of this general permit can be had by filing a petition for review in the United States Court of Appeals with 120 days after the permit is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. In addition, rather than submitting an NOI to be covered under this permit, persons may apply for an individual permit as specified at 40 CFR 122.21 (and authorized at 40 CFR 122.28), and then petition the Environmental Appeals Board to review any conditions of the individual permit (40 CFR 124.19 as modified on May 15, 2000, 65 FR 30886).

IV. Compliance with the Regulatory Flexibility Act for General Permits

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The legal question of whether a general permit (as opposed to an individual permit) qualifies as a ''rule'' or as an ''adjudication'' under the Administrative Procedure Act (APA) has been the subject of periodic litigation. In a recent case, the court held that the CWA section 404 Nationwide general permit before the court did qualify as a ''rule'' and therefore that the issuance of the general permit needed to comply with the applicable legal requirements for the issuance of a ''rule.'' *National Ass'n of Home Builders* v. *U.S. Army Corps of Engineers*, 417 F.3d 1272, 1284–85 (DC Cir. 2005) (Army Corps general permits under section 404 of the Clean Water Act are rules under the APA and the Regulatory Flexibility Act; ''Each NWP [nationwide permit] easily fits within the APA's definition of a 'rule.'* * * As such, each NWP constitutes a rule * * *'').

As EPA stated in 1998, ''the Agency recognizes that the question of the applicability of the APA, and thus the RFA, to the issuance of a general permit is a difficult one, given the fact that a large number of dischargers may choose to use the general permit.'' 63 FR 36489, 36497 (July 6, 1998). At that time, EPA ''reviewed its previous NPDES general permitting actions and related statements in the **Federal Register** or elsewhere,'' and stated that ''[t]his review suggests that the Agency has generally treated NPDES general permits effectively as rules, though at times it has given contrary indications as to whether these actions are rules or permits.'' *Id.* at 36496. Based on EPA's further legal analysis of the issue, the Agency ''concluded, as set forth in the proposal, that NPDES general permits are permits [i.e., adjudications] under the APA and thus not subject to APA rulemaking requirements or the RFA.'' *Id.* Accordingly, the Agency stated that ''the APA's rulemaking requirements are inapplicable to issuance of such permits,'' and thus ''NPDES permitting is not subject to the requirement to publish a general notice of proposed rulemaking under the APA or any other law * * * [and] it is not subject to the RFA.'' *Id.* at 36497.

However, the Agency went on to explain that, even though EPA had concluded that it was not legally required to do so, the Agency would voluntarily perform the RFA's small-entity impact analysis. *Id.* EPA explained the strong public interest in the Agency following the RFA's requirements on a voluntary basis: ''[The notice and comment] process also provides an opportunity for EPA to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities.'' *Id.* Accordingly, with respect to the NPDES permit that EPA was addressing in that **Federal Register** notice, EPA stated that ''the Agency has considered and addressed the potential impact of the general permit on small entities in a manner that would meet the requirements of the RFA if it applied.'' *Id.*

Subsequent to EPA's conclusion in 1998 that general permits are adjudications, rather than rules, as noted above, the DC Circuit recently held that Nationwide general permits under section 404 are ''rules'' rather than ''adjudications.'' Thus, this legal question remains ''a difficult one'' (*supra*). However, EPA continues to believe that there is a strong public policy interest in EPA applying the RFA's framework and requirements to the Agency's evaluation and consideration of the nature and extent of any economic impacts that a CWA general permit could have on small entities (e.g., small businesses). In this regard, EPA believes that the Agency's evaluation of the potential economic impact that a general permit would have on small entities, consistent with the RFA framework discussed below, is relevant to, and an essential component of, the Agency's assessment of whether a CWA general permit would place requirements on dischargers that are appropriate and reasonable. Furthermore, EPA believes that the RFA's framework and requirements provide the Agency with the best approach for the Agency's evaluation of the economic impact of general permits on small entities. While using the RFA framework to inform its assessment of whether permit requirements are appropriate and reasonable, EPA will also continue to ensure that all permits satisfy the requirements of the Clean Water Act.

Accordingly, EPA hereby commits that the Agency will operate in accordance with the RFA's framework and requirements during the Agency's issuance of CWA general permits (in other words, the Agency commits that it will apply the RFA in its issuance of general permits as if those permits do qualify as ''rules'' that are subject to the RFA). In satisfaction of this commitment, during the course of this MSGP permitting proceeding, the Agency conducted the analysis and made the appropriate determinations that are called for by the RFA. In addition, and in satisfaction of the Agency's commitment, EPA will apply the RFA's framework and requirements in any future MSGP proceeding as well as in the Agency's issuance of other NPDES general permits. EPA anticipates that for most general permits the Agency will be able to conclude that there is not a significant economic impact on a substantial number of small entities. In such cases, the requirements of the RFA framework are fulfilled by including a statement to this effect in the permit fact sheet, along with a statement providing the factual basis for the conclusion. A quantitative analysis of impacts would only be required for permits that may affect a substantial number of small entities, consistent with EPA guidance regarding RFA certification [1].

[1] EPA's current guidance, entitled Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business Regulatory

Continued

V. Quantitative Analysis of Economic Impacts of the MSGP

EPA has determined, in consideration of the discussion in section IV above, that the issuance of the MSGP potentially could affect a substantial number of small entities. Therefore, to determine what, if any, economic impact this permit may have on small businesses, EPA conducted an economic assessment of this general permit. Based on this assessment, EPA concludes that this permit will not have a significant economic impact on a substantial number of businesses, including small businesses. The estimated increased compliance cost per permittee ranges from a low of $8.37 per year to a high of $28.27 per year. All cost estimates are presented in 2005 dollars. As a percentage of annual sales, the expected incremental burden of these estimated costs is small. The cost-to-sales ratios are small across all MSGP sectors, with the largest impacts observed in Sectors I (0.003 percent) and P (0.003 percent).

These cost estimates reflect the incremental monitoring, documentation and reporting costs imposed by this permit, relative to the comparable costs for compliance with MSGP 2000. They do not include the costs of additional control measures that may be required as a result of more rigorous documentation and reporting requirements (e.g., for corrective action). EPA recognizes that these costs may be significant for some facilities, but believes that relatively few facilities will have significantly increased costs relative to MSGP 2000 because in most cases the underlying standards of control have not changed. EPA was unable to quantify these costs because EPA is not able to predict what site-specific additional control measures may be necessary in these limited cases.

Based on EPA's analysis, the Agency concludes that this permit will not result in a significant economic impact on a substantial number of small businesses. The factual basis for this conclusion is included in the economic analysis for the permit, available as part of the docket for this permit, and summarized above.

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

Dated: September 17, 2008.

Robert W. Varney,

Regional Administrator, EPA Region 1.

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

Dated: September 17, 2008.

Carl-Axel P. Soderberg,

Division Director, Caribbean Environmental Protection Division, EPA Region 2.

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

Dated: September 16, 2008.

Jon M. Capacasa,

Director, Water Protection Division, EPA Region 3.

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

Dated: September 16, 2008.

Timothy C. Henry,

Acting Director, Water Division, EPA Region 5.

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

Dated: September 17, 2008.

Miguel I. Flores,

Director, Water Quality Protection Division, EPA Region 6.

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

Dated: September 16, 2008.

Alexis Strauss,

Director, Water Division, EPA Region 9.

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

Dated: September 16, 2008.

Christine Psyk,

Deputy Director, Office of Water and Watersheds, EPA Region 10.

[FR Doc. E8–22555 Filed 9–26–08; 8:45 am]

BILLING CODE 6560–50–P

Enforcement and Fairness Act, was issued in November 2006 and is available on EPA's Web site: *http://www.epa.gov/sbrefa/documents/rfafinalguidance06.pdf.* After considering the Guidance and the purpose of CWA general permits, EPA concludes that general permits affecting less than 100 small entities do not have a significant economic impact on a substantial number of small entities.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8722–6]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Homeland Security Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference for the Agency and its federal partners to brief the Homeland Security Advisory Committee (HSAC) on their progress in developing the *Environmental Response Technical Assistance Document for Bacillus anthracis Terrorism Incidents (ERTAD).*

DATES: The public teleconference will be held on Wednesday, October 15, 2008, from 1 p.m. to 3 p.m. (Eastern time).

Location: The public teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information regarding this public teleconference meeting should contact Ms. Vivian Turner, Designated Federal Officer, by telephone: (202) 343–9697 or e-mail at *turner.vivian@epa.gov.* The SAB mailing address is U.S. EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB as well as any updates concerning this request for nominations may be found on the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the EPA Administrator on the technical basis for Agency policies and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. The SAB HSAC provides scientific and technical advice to the EPA Administrator through the chartered SAB on scientific matters pertaining to EPA's mission in protecting against the environmental and health consequences of terrorism.

EPA's Office of Solid Waste and Emergency Response (OSWER) is charged with preserving and restoring the land by using innovative waste management practices and cleaning up contaminated properties to reduce risks posed by harmful substances. EPA has a major role in reducing the risk to human health and the environment posed by accidental or intentional releases of harmful substances. For emergency preparedness, response and homeland security, EPA works closely with sixteen other federal agencies on the Federal Government National Response Team (NRT). The NRT has asked OSWER to request consultative advice from the SAB HSAC on the *Environmental Response Technical Assistance Document for Bacillus anthracis Terrorism Incidents (ERTAD) (Formerly known as the Draft Federal Inter-Agency Anthrax Technical Assistance Document (TAD)).* The TAD was initially an interim technical resource document developed in