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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/fedrgrstr>.

## II. Contractor Requirements

Under these contract numbers, the contractor will perform the following:

Under Contract No. EP-08-H000383, The Birnbaum Interpreting Services will provide with Sign Language interpreting services. The work will be performed in a space to be designated by EPA, primarily at EPA Headquarters and other Washington, DC area EPA facilities. Occasional travel will be involved. The sign language personnel will report to the location specified by the EPA Headquarters Interpreting Coordinator, also identified as the Project Officer under this contract. The contract does not employ any subcontractors.

The OPP has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with Birnbaum Interpreting Services, prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Birnbaum Interpreting Services is required to submit for EPA approval a security plan

under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Birnbaum Interpreting Services until the requirements in this document have been fully satisfied. Records of information provided to Birnbaum Interpreting Services will be maintained by EPA Project Officers for these contracts. All information supplied to Birnbaum Interpreting Services by EPA for use in connection with these contracts will be returned to EPA when Birnbaum Interpreting Services has completed its work.

### List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: August 19, 2009.

**Oscar Morales,**

*Acting Director, Office of Pesticide Programs.*  
[FR Doc. E9-20606 Filed 8-25-09; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8941-2]

### Final EPA Region 4 National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Construction Activities

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

**ACTION:** Notice of final permit issuance.

**SUMMARY:** EPA Region 4 is issuing the final National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges from new dischargers engaged in large and small construction activities on Indian Country Lands within Region 4. Hereinafter, this NPDES general permit will be referred to as "permit" or "2009 construction general permit" or "2009 CGP." "New dischargers" are those who did not file a notice of intent ("NOI") to be covered under the 2004 construction general permit ("2004 CGP") before it expired. Existing dischargers who properly filed an NOI to be covered under the 2004 CGP continue to be authorized to discharge under that

permit according to its terms. This 2009 CGP contains generally the same limits and conditions as the National CGP that was issued by other EPA regions and became effective on June 30, 2008 ("2008 National CGP"). EPA Region 4 is issuing this CGP for a period not to exceed two (2) years and will make the permit available to new construction activities and unpermitted ongoing activities only.

**DATES:** The effective date of this permit is September 1, 2009 and will expire at midnight August 31, 2011. 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 2004 CGP. In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on September 15, 2009. 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.

### FOR FURTHER INFORMATION CONTACT:

Alanna Conley, Water Protection Division, Stormwater and Nonpoint Source Section, Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; telephone number: (404) 562-9443. In addition, copies of the permit and fact sheet may be downloaded at <http://www.epa.gov/region4/water/permits/stormwater.html>.

### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Does This Action Apply to Me?

If a discharger chooses to apply to be authorized to discharge under the 2009 construction general permit ("2009 CGP"), the permit provides specific requirements for preventing contamination of stormwater discharges from the following construction activities:

Category	Examples of affected entities	North American Industry Classification System (NAICS) code
Industry .....	Construction site operators disturbing 1 or more acres of land, or less than 1 acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more, and performing the following activities:	
	Building, Developing and General Contracting .....	233
	Heavy Construction .....	234

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of activities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the definition of “construction activity” and “small construction activity” in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Eligibility for coverage under the 2009 CGP would be limited to operators of “new projects” or “unpermitted ongoing projects.” A “new project” is one that commences after the effective date of the 2009 CGP. An “unpermitted ongoing project” is one that commenced prior to the effective date of the 2009 CGP, yet never received authorization to discharge under the 2004 CGP or any other NPDES permit covering its construction-related stormwater discharges. This proposal is limited to those areas where EPA Region 4 is the permitting authority, including all Indian Country Lands within the States of Alabama, Florida, Mississippi, and North Carolina.

## II. Background of Permit

### A. Statutory and Regulatory History

The Clean Water Act (“CWA”) establishes a comprehensive program “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. 1251(a). The CWA also includes the objective of attaining “water quality which provides for the protection and propagation of fish, shellfish and wildlife.” 33 U.S.C. 1251(a)(2). To achieve these goals, the CWA requires EPA to control the discharges through the issuance of National Pollutant Discharge Elimination System (“NPDES”) permits.

Section 405 of the Water Quality Act of 1987 (WQA) added Section 402(p) of the CWA, which directed EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. EPA published a final regulation in the **Federal Register** on the first phase of this program on November 16, 1990, establishing permit application requirements for “storm water discharges associated with industrial activity.” See 55 FR 47990. EPA defined the term “storm water discharge associated with industrial activity” in a comprehensive manner to cover a wide variety of facilities. Construction activities, including activities that are part of a larger common plan of development or sale, that ultimately disturb at least five acres of land and have point source discharges to waters of the United States were included in the definition of “industrial activity” pursuant to 40 CFR 122.26(b)(14)(x). Phase II of the stormwater program was published in the **Federal Register** on December 8, 1999, and required NPDES permits for discharges from construction sites disturbing at least one acre, but less than five acres, including sites that are part of a larger common plan of development or sale that will ultimately disturb at least one acre but less than five acres, pursuant to 40 CFR 122.26(b)(15)(i). See 64 FR 68722. EPA is issuing the 2009 CGP under the statutory and regulatory authority cited above.

NPDES permits issued for construction stormwater discharges are required under Section 402(a)(1) of the CWA to include conditions for meeting technology-based effluent limits established under Section 301 and, where applicable, Section 306. Once an effluent limitations guideline or new source performance standard is promulgated in accordance with these sections, NPDES permits are required to incorporate limits based on such limitations and standards. See 40 CFR 122.44(a)(1). Prior to the promulgation of national effluent limitations and standards, permitting authorities incorporate technology-based effluent limitations on a best professional

judgment basis. CWA Section 402(a)(1)(B); 40 CFR 125.3(a)(2)(ii)(B).

### B. Summary of Permit

EPA noticed the draft 2009 CGP for public review and comment on May 7, 2009. No comments were received from the public, and therefore, the requirements and provisions of the final permit are not different from those proposed in the draft permit.

Construction operators choosing to be covered by the 2009 CGP must certify in their notice of intent (NOI) that they meet the requisite eligibility requirements, described in Subpart 1.3 of the permit. If eligible, operators are authorized to discharge under this permit in accordance with Part 2. The 2009 CGP includes conditions and limits that are generally identical to the 2008 National CGP issued by other EPA Regional offices, with a few requirements carried over from the 2004 CGP. Note that the 2009 CGP only applies to new and unpermitted ongoing construction projects. Discharges from ongoing projects (or “existing dischargers”) continue to be covered under the existing 2004 CGP. (However, EPA clarifies that if an operator of a permitted ongoing project transfers ownership of the project, or a portion thereof, to a different operator, that subsequent operator will be required to submit a complete and accurate NOI for a new project under the 2009 CGP.) Dischargers who filed NOIs to be authorized under the 2004 permit prior to the expiration date will continue to be authorized to discharge in accordance with EPA’s regulations at 40 CFR 122.6. Operators of new projects or unpermitted ongoing projects seeking coverage under the 2009 CGP are expected to use the same electronic Notice of Intent (eNOI) system that is currently in place for the 2004 CGP. Permittees must install and implement control measures to meet the effluent limits applicable to all dischargers in Part 3, and must inspect such stormwater controls and repair or modify them in accordance with Part 4. The permit in Part 5 requires all construction operators to prepare a stormwater pollution prevention plan (SWPPP) that identifies all sources of

pollution, and describes control measures used to minimize pollutants discharged from the construction site. Part 6 details the requirements for terminating coverage under the permit.

### C. What Is EPA's Rationale for the Two-Year Duration of the 2009 CGP?

The 2009 CGP is effective for a period not to exceed two years. As a result of recent litigation brought against EPA concerning the promulgation of effluent limitations guidelines and standards for the construction and development ("C&D") industry, EPA was required by court order to propose effluent limitations guidelines and new source performance standards (hereinafter, "effluent guidelines") for the C&D industry by December 2008, and promulgate those effluent guidelines by December 2009. See *Natural Resources Defense Council, et al. v. U.S. Environmental Protection Agency*, No. CV-0408307-GH (C.D. Cal.) (Permanent Injunction and Judgment, December 5, 2006). EPA believes it is appropriate to propose a revised National CGP once EPA has issued C&D effluent guidelines, and therefore proposes a maximum two-year duration for this permit to better coincide with the court-ordered deadlines for the C&D rule. EPA intends to propose and finalize a new, revised National CGP sooner, if the C&D rule is promulgated earlier than the date directed by the court.

### D. Why Is EPA Using Requirements That Are Nearly Identical to the 2004 CGP?

In consideration that the 2004 CGP expired on April 30, 2009, it is incumbent upon EPA Region 4 to make available a similar general permit that provides coverage for any new dischargers commencing construction in the areas where EPA Region 4 is the permitting authority. Without such a permit vehicle, the only other available option for construction site operators is to obtain coverage under an individual permit. EPA is issuing a CGP that adopts generally the same limits and conditions of the 2008 National CGP issued by other EPA regions for a limited period of time. This action is appropriate for several reasons. One main reason, as discussed above, is that EPA is working on the development of a new effluent guideline that will address stormwater discharges from the same industrial activities (*i.e.*, construction activities disturbing one or more acres) as the CGP. Because the development of the C&D rule and the issuance of the CGP are on relatively similar schedules, and the C&D rule will establish national technology-based effluent limitations and standards for construction

activities, EPA believes that it is more appropriate to proceed along two tracks to permit construction discharges. The first track entails issuing a CGP for a limited period of time, not to exceed 2 years, that contains the 2004 CGP limits and conditions, but for only operators of new and unpermitted ongoing projects, so that such entities can obtain valid permit coverage for their discharges. The second track involves proposing and issuing a revised 5-year CGP that incorporates the requirements of the new C&D rule after the rule is promulgated.

In addition, EPA believes that issuing a substantially revised CGP would be impracticable given the number of unknowns concerning the outcome of the C&D rule. EPA does not believe that it would be appropriate to issue a permit containing technology-based limitations that could be quickly outdated, given the timing of a promulgation of the C&D rule and permit issuance. If EPA had attempted to approximate the requirements of the new C&D rule and incorporate such limits into a new CGP, such a permit would presuppose the outcome of the C&D rule and potentially conflict with the scope and content of the effluent limitation guideline. Instead, EPA Region 4 has decided to wait the short time until after the C&D rule promulgation to issue a revised CGP that is fully reflective of the new effluent limitation guideline. In the meantime, during this relatively short period of time prior to the C&D rule's promulgation and prior to the issuance of the revised CGP that incorporates those standards, EPA is proposing to use similar permit limits and conditions as the 2004 CGP as an effective vehicle to control new discharges. EPA notes that it has minimized the amount of time during which the 2009 CGP will remain effective in order to underscore the Agency's intention to issue a revised CGP once the C&D rule is finalized.

### E. Significant Changes From 2004 CGP

As discussed above, the 2009 CGP will provide coverage for a period not to exceed two years. This permit would include similar limits and conditions as the 2004 CGP with the following noteworthy differences:

1. Clarification that eligibility for coverage under the 2009 CGP is limited to operators of new and unpermitted ongoing construction projects.
2. Clarification that operators of ongoing permitted construction projects are not eligible for coverage under the 2009 CGP.

### F. Geographic Coverage

EPA is only authorized to provide permit coverage for classes of discharges that are outside the scope of a State's NPDES program authorization. The EPA Region 4, 2009 CGP replaces the expired 2004 CGP for operators of new and unpermitted ongoing construction projects. The geographic coverage and scope of the 2009 CGP includes all Indian Country Lands within the States of Alabama, Florida, Mississippi, and North Carolina, where EPA Region 4 is the NPDES permitting authority. There is no change in the scope of coverage from the 2004 CGP.

## III. Compliance With the Regulatory Flexibility Act

### A. EPA's Approach to 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 that 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 CWA are rules under the APA and the Regulatory Flexibility Act; "Each NWP [nationwide permit] easily fits within the APA's definition '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 CWA. Accordingly, EPA has committed to operate in accordance with the RFA’s framework and requirements during the Agency’s issuance of CWA general permits (in other words, the Agency has committed 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).

#### *B. Application of RFA Framework to Proposed Issuance of CGP*

EPA has concluded, consistent with the discussion in Section IV.A above, that the issuance of the 2009 CGP could affect a handful of small entities. In the areas where the CGP is effective (see Section II.E), (those areas where EPA is the permit authority), a total of 27 construction projects were authorized under the 2004 CGP—some of these project could have been operated by small entities. However, EPA has concluded that the proposed issuance of the 2009 CGP is unlikely to have an adverse economic impact on small entities. The 2009 CGP includes the same requirements as those of the national 2008 CGP issued by other EPA regions. Additionally, an operator’s use of the CGP is volitional (*i.e.*, a discharger could apply for an individual permit rather than for coverage under this general permit) and, given the more streamlined process for obtaining permit coverage, is less burdensome than an individual NPDES permit. EPA intends to include an updated economic screening analysis with the issuance of the next national CGP.

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

Dated: August 17, 2009.

**James D. Giattina, Director,**

*Water Protection Division, Region 4.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

[EPA–HQ–OPP–2009–0008; FRL–8433–4]

### **Tribal Pesticide Program Council; Notice of Public Meeting**

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

**ACTION:** Notice.

**SUMMARY:** The Tribal Pesticide Program Council (TPPC) will hold a two-day meeting on Wednesday, October 14, 2009 and Thursday, October 15, 2009. This notice announces the location and times for the meeting and sets forth tentative agenda topics.

**DATES:** The meeting will be held on Wednesday, October 14, 2009 and Thursday, October 15, 2009 from 9 a.m. to 5 p.m.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

**ADDRESSES:** The meeting will be held in the Office of Pesticide Programs (OPP) 4th Floor South Conference Room, One Potomac Yard, 2777 S. Crystal Drive, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Mary Powell, Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7384; fax number: (703) 308–1850; e-mail address: [powell.mary@epa.gov](mailto:powell.mary@epa.gov); or Lillian Wilmore, TPPC Administrator, 1595 Beacon St. #3, Brookline, MA 02446–4617; telephone number: (617) 232–5742; fax number: (617) 277–1656; e-mail address: [NAEcology@aol.com](mailto:NAEcology@aol.com). For information about the TPPC, please see <http://www.epa.gov/oppfed1/tribes/tppc.htm>.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. Does this Action Apply to Me?*

You may be interested in this meeting if you are interested in the TPPC’s information-exchange relationship with EPA regarding important issues in Indian country related to human and environmental exposure to pesticides and insight into EPA’s decision-making process. All parties are invited and encouraged to participate as appropriate. Potentially affected entities may include, but are not limited to, those who use, or conduct testing of, chemical substances under the Federal