



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Office of Wastewater Enforcement and Compliance
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OFFICE OF
WATER

Fact Sheet on the
Ninth Circuit Opinion on
the Storm Water Regulations

NINTH CIRCUIT OPINIONS:

On May 27 and June 4, 1992, the United States Court of Appeals for the Ninth Circuit, issued two opinions generally affirming EPA's November 16, 1990 storm water application regulations. American Mining Congress v. EPA, 965 F.2d 759 (9th Cir. 1992) ("AMC"); Natural Resources Defense Council v. EPA, 966 F.2d 1292 (9th Cir. 1992) ("NRDC").

AFFIRMATION OF THE STORM WATER PROGRAM:

The Court in "NRDC" generally affirmed the direction and substance of Agency's storm water program. Specifically, the Ninth Circuit upheld EPA's definition of "municipal separate storm sewer system", the standards for municipal storm water controls, the scope of the permit exemption for oil and gas operations, and EPA's decision not to provide public comment on Part I group industrial permit applications. In "AMC", the Court upheld EPA's regulation of storm water discharges from inactive mines.

All other aspects of the municipal and industrial storm water regulations were unchallenged and unaffected by the Court's opinions.

DEADLINES:

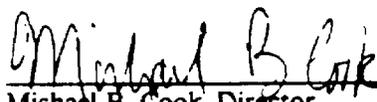
The Court in "NRDC" declared EPA's extension of the statutory deadlines for storm water applications to be unlawful, but it declined to strike down the deadline extensions. The Ninth Circuit, however, expressly noted that EPA has no authority to extend permit application deadlines further.

REMAND:

The Court in "NRDC" also invalidated and remanded for further proceedings two exemptions from the definition of storm water discharges "associated with industrial activity": 1) the exemption of construction sites smaller than 5 acres, and 2) the exemption of certain "light" industries whose industrial activities are not exposed to rain water.

In response to the Court's two remands, the Agency intends to conduct further rulemaking proceedings on construction activities under 5 acres and light industry without exposure. EPA will not require permit applications for construction activities disturbing less than 5 acres or for light industry without exposure until this further rulemaking is completed.

If you have questions, please call the EPA Storm Water Hotline at (703) 821-4823.



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Date