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

JUN 13 2003

OFFICE OF
WATER

The Honorable Frank R. Lautenberg
United States Senate
Washington, D. C. 20510

Dear Senator Lautenberg:

Thank you for your letter dated March 6, 2003 regarding the U.S. EPA postponement of the requirement to obtain an NPDES storm water permit for oil and gas construction activity that disturbs one to five acres of land. Your letter requested a correction of information supporting EPA's proposed regulation "Modification of National Pollutant Discharge Elimination System Permit Deadline for Storm Water Discharges for Oil and Gas Construction Activity that Disturbs One to Five Acres of Land" (67 *Federal Register* 79828, December 30, 2002) under the EPA Information Quality Guidelines.

During the public comment period on the proposed regulation, EPA received and considered numerous comments from the general public, environmental groups, other agencies, and industry representatives. The final regulation (68 *Federal Register* 11325, March 10, 2003) was signed on March 5, 2003.

Under the Agency's Information Quality Guidelines, EPA considers requests for corrections to information supporting a proposed rulemaking during the public comment period. Unfortunately, EPA received your letter after the final rule was signed. However, I would like to take this opportunity to respond to the concerns raised in your March 6, 2003 letter.

On December 8, 1999, the final Storm Water Phase II rule was published in the *Federal Register* (The National Pollutant Elimination System-Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges: Final Rule; 64 *Federal Register* 6872200). These regulations expanded the NPDES permitting program to require permit coverage by March 10, 2003 for, among other things, construction sites that disturb one to five acres. As part of that rulemaking, EPA developed an Economic Analysis (EA). In that EA, EPA assumed that few, if any, oil and gas exploration, production, processing, or treatment operations or transmission facilities would be affected by the final regulations. Since promulgation of the final Storm Water Phase II rule, EPA has received numerous letters from the oil and gas industry and States stating that a significantly larger number of sites would, in fact, be affected by our rule.

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In investigating these statements, EPA requested and used data from the Department of Energy's Energy Information Administration (EIA) regarding the average number of oil and gas exploration and production facilities that would be affected by final Storm Water Phase II regulations. The Agency also requested and received data directly from States, the regulated community and other entities on this issue. These data were subsequently utilized to gauge the impact of the Storm Water Phase II regulations and were of appropriate quality for this use. All of this information and data called into question our earlier estimates of the number of sites that would be affected by the regulations. Estimates from the EIA, States with oil and gas activity, and industry representatives, all forecast at least 30,000 onshore wells being drilled per year in the forseeable future. This was in direct contrast to the estimates available to EPA at the time of the promulgation of the Storm Water Phase II rule. Due to this great variation, EPA determined that additional time was needed to better and more accurately ascertain the potential impacts of a future rulemaking and therefore promulgated a final rule postponing until March 10, 2005, the requirement to obtain an NPDES storm water permit for oil and gas construction activity that disturbs one to five acres of land.

The final rule signed on March 5, 2003 does not call into question the need for controlling sediment from all types of construction, including oil and gas. It simply provides two years for the Agency to determine the best way to do so. We intend to use the next two years to work with States, the regulated community and other entities to ensure that we are using the best data possible as we work towards improving implementation of regulations that protect our land and water.

Again, thank you for sharing your concerns on this issue. If you have any further questions, please contact me, or your staff may call Steve Kinberg in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-5037.

Sincerely yours,

G. Tracy Mehan, III
Assistant Administrator