



Final Rule: Amendments to the Storm Water Regulations for Discharges Associated with Oil and Gas Construction Activities

Consistent with the Energy Policy Act of 2005, EPA published a final rule that exempts storm water discharges of sediment from construction activities at oil and gas sites from the requirement to obtain an NPDES permit except in very limited instances. Although sediment discharged from oil and gas-related construction activities alone does not compel permit coverage, the rule encourages operators of oil and gas field activities or operations to implement and maintain best management practices (BMPs) to minimize erosion and control sediment to protect surface water quality during storm events. States may choose to regulate these activities through a non-NPDES permit program. This rule is effective June 12, 2006.

Background

The 1987 Water Quality Act (WQA) added a section 402(p) to the Clean Water Act (CWA) requiring EPA to develop and implement a storm water permitting program. EPA developed this program in two phases (Phase I: 1990; Phase II: 1999). Those regulations establish NPDES permit requirements for municipal, industrial, and construction site storm water runoff. The WQA also added section 402(l)(2) to the CWA specifying that EPA and states shall not require NPDES permits for uncontaminated storm water discharges from oil and gas exploration, production, processing or treatment operations, or transmission facilities. Since 1992 EPA had interpreted the 402(l)(2) exemption as not applying to construction activities (i.e., permit coverage is required).

In 2002, shortly before the Phase II regulations took effect for small construction activities disturbing one to five acres, industry stakeholders notified EPA that the Agency had incorrectly assumed that oil and gas activities would not be affected by these permit requirements. Industry noted that these regulations would apply to approximately 30,000 sites annually and would have a significant economic impact on the industry. In response, EPA deferred (until June 12, 2006) the Phase II storm water requirements for small oil and gas construction activities disturbing one to five acres to analyze the costs and benefits associated with those regulations. EPA planned to propose an action in the **Federal Register** in late 2005 and finalize this action before the June 12, 2006 deferral expiration.

Before the Agency proposed an action, Congress passed the Energy Policy Act of 2005, which became law on August 8, 2005. Section 323 of this Act added a new paragraph (24) to Section 502 of the CWA to define the term “oil and gas exploration, production, processing, or treatment, or transmission facilities” to mean “all field activities or operations associated with exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities.”

The term “oil and gas exploration, production, processing, or treatment, or transmission facilities” is the term used in 402(l)(2) of the CWA and in the NPDES regulations to define those types of activities eligible for the exemption from NPDES permit requirements for storm water discharges. This statutory change altered the scope of the 402(l)(2) exemption and rendered EPA’s ongoing Phase II analysis unnecessary. The CWA amendment made no distinction between Phase I and Phase II regulatory requirements.

This final rule codifies the amendment to the CWA enacted in the Energy Policy Act of 2005 and clarifies that storm water discharges of sediment from oil and gas-related construction activities under Phase I and II are eligible for the statutory exemption from NPDES permit requirements found in CWA section 402(l)(2), except in very limited instances.

About this Final Rule

Changes to the NPDES regulations promulgated by this rule are designed to maintain consistency with the new law. The final rule specifies that storm water discharges from oil and gas-related construction activities are eligible for the exemption from NPDES permit coverage, except in very limited instances. EPA interprets this exclusion to apply to construction of drilling sites, waste management pits, and access roads, as well as construction of the transportation and treatment infrastructure such as pipelines, natural gas treatment plants, natural gas pipeline compressor stations, and crude oil pumping stations. Construction activities that result in a discharge of a reportable quantity release or that contribute pollutants (other than non-contaminated sediments) to a violation of a water quality standard are still subject to permit coverage.

This final action also adds complementary text encouraging operators of oil and gas field activities or operations to implement and maintain Best Management Practices (BMPs) to minimize erosion and control sediment during and after construction activities to help ensure protection of surface water quality during storm events.

This rulemaking applies to all States, Federal lands and Indian Country regardless of whether EPA or a State is the NPDES permitting authority. However, this rule is not intended to interfere with the States' authority to regulate any discharges, pursuant to state law, through a non-NPDES permit program.

EPA expects to publish the final rule in the **Federal Register** in advance of the June 12, 2006 expiration date for the deferral of permitting requirements for small oil and gas construction activities.

How to Get Additional Information

For additional information about this rule, contact Jeff Smith at (202) 564-0652 or by email at smith.jeff@epa.gov. To view the **Federal Register** notice for this final action or for general information about EPA’s NPDES Storm Water program visit EPA’s NPDES web site at: www.epa.gov/npdes/stormwater.