

is not adequately administering the part 71 program with respect to the Power Plants, in accordance with the Agreement, 40 CFR part 71, and/or the Act. Because USEPA is retaining its authority to act upon petitions submitted pursuant to 40 CFR 71.10(h) and 71.11(n), any such petitions must be submitted to USEPA Region IX following the procedures set forth in those regulations.

USEPA also notifies the public, pursuant to 40 CFR 71.9(c)(2)(ii), that effective March 21, 2006, it has suspended collection of its part 71 permit fees for the Power Plants. In delegating the administration of the part 71 program, USEPA has determined that NNEPA can collect fees under tribal law sufficient to fund the delegated part 71 program for the Power Plants and carry out the duties specified in the Agreement.

Dated: March 21, 2006.

**Wayne Nastri,**

*Regional Administrator, Region 9.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8053-6]

### Notice of Availability of Revisions to Proposed NPDES General Permits for Small Municipal Separate Storm Sewer Systems (MS4s) in New Mexico, Indian Country Lands in New Mexico and Indian Country Lands in Oklahoma

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

**ACTION:** Notice of availability.

**SUMMARY:** EPA Region 6 is announcing the availability of a supplemental fact sheet describing proposed revisions to, and is reopening the comment period for, previously proposed National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges from small municipal separate storm sewer systems (MS4s) located in the State of New Mexico (NMR040000), Indian Country Lands in New Mexico (NMR040001), and Indian Country Lands in Oklahoma (OKR040001). These permits were previously publically noticed on September 9, 2003 (68 FR 53166) and a 45 day public comment period on all parts of the permits was provided at that time. The public comment period is being reopened for the limited purpose of accepting public comments on changes which have been made to the draft permits primarily as a method to

address a decision by the United States Court of Appeals for the Ninth Circuit, which remanded certain portions of the Phase II NPDES storm water regulations related to issuance of general permits for small MS4s. The Region is accepting comments only on today's proposed changes to the draft permits. Following the close of the comment period, the Director will make a final permit decision based on comments received during both the initial comment period and the reopened comment period.

**DATES:** Comments on today's revisions to these draft permits must be submitted by May 4, 2006. Comments must be received or postmarked by midnight on the last day of the comment period. EPA is not required to consider late comments.

**ADDRESSES:** Comments on today's revisions to the draft general permits should be sent to Docket No. 6WQ-03-SW01, Attn: Ms. Diane Smith, EPA Region 6, Water Quality Protection Division (6WQ-CA), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Comments may also be submitted in electronic format (Wordperfect 9, MS Word 2000, or ASCII Text formats only, avoiding use of special characters) to: the above address or via e-mail to [smith.diane@epa.gov](mailto:smith.diane@epa.gov). No facsimiles (faxes) will be accepted. Copies of information in the record are available upon request from the contacts below. A reasonable fee may be charged for copying.

#### FOR FURTHER INFORMATION CONTACT:

Additional information concerning the draft permits may be obtained from Ms. Diane Smith, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-2145. The supplemental fact sheet describing the modifications being noticed today, along with the originally proposed general permit and fact sheet documents, are available at <http://www.epa.gov/earth1r6/6wq/npdes/sw/ms4/>.

**SUPPLEMENTARY INFORMATION:** The originally proposed general permits and the modifications being proposed today cover storm water discharges from municipal separate storm sewer systems (MS4s) meeting the definition of a "small municipal separate storm sewer system" at 40 CFR 122.26(b)(16) and designated under 40 CFR 122.32(a)(1) or 40 CFR 122.32(a)(2). An MS4 consists of a system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) that collects storm water; is owned or operated by the United States,

a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA; and discharges to waters of the United States. A small MS4 typically serves a population of less than 100,000. Only those small MS4s located in a Census-defined Urbanized Area or having been designated by the Director are required to apply for permits (see 40 CFR 122.32). Maps of Urbanized Areas and lists of cities and counties within them are available online at <http://cfpub.epa.gov/npdes/stormwater/urbanmaps.cfm>.

Subsequent to EPA Region 6's proposal of the general permits for small MS4s on September 9, 2003, the U.S. Court of Appeals for the Ninth Circuit denied EPA's petition for rehearing in litigation over EPA's storm water Phase II regulations. *Environmental Defense Center, et al. v. EPA*, No. 70014 & consolidated cases (9th Cir., Sept. 15, 2003). Plaintiffs in that litigation challenged the Phase II NPDES storm water regulations issued by EPA pursuant to Clean Water Act (CWA) section 402(p)(6). Among other things, the Phase II regulations require NPDES permits for storm water discharges from certain MS4s for which NPDES permits were not required under CWA section 402(p)(2) and the Phase I NPDES storm water regulations. The regulations also require the newly regulated MS4s to develop, implement, and enforce a storm water management program containing, amongst other things, best management practices (BMPs) identified by the discharger. The regulations authorize the use of general permits and require that these BMPs (as well as measurable goals associated with these BMPs) be identified in the Notice of Intent (NOI) filed by the MS4 in seeking authorization under a general permit. Relying on the "traditional" general permit model, the Agency did not require NOIs to be reviewed by the Agency, made available to the public for review and comment, or to be subject to public hearings. The Ninth Circuit held that EPA's failure to address these issues in establishing NOI requirements violated various provisions of CWA section 402, and remanded the Phase II regulations on three grounds related to

the use of NPDES permits to authorize discharges from small MS4s: (1) Public availability of Notices of Intent (NOIs), (2) opportunity for public hearing, and (3) Permitting Authority review of NOIs.

On April 16, 2004, EPA's Office of Wastewater Management issued guidance to NPDES Permitting Authorities entitled "Implementing the Partial Remand of the Stormwater Phase II Regulations Regarding Notices of Intent & NPDES General Permitting for Phase II MS4s" (available at <http://www.epa.gov/npdes/pubs/hanlonphase2apr14signed.pdf>). This document provides guidance to permitting authorities on addressing the Court's partial remand when issuing general permits for small MS4s. Today's revisions to the originally proposed general permits are in response to the partial remand to the Phase II regulations and issues raised in the Court's decision and are consistent with EPA's Office of Wastewater Management Guidance.

The public comment period on the proposed general permits is being reopened, in accordance with procedures at 40 CFR 124.14, for the limited purpose of accepting public comments on today's proposed changes to the draft permits. EPA's public comment and public hearing procedures may be found at 40 CFR 124.10 and 124.12 (48 FR 142664, April 1, 1983, as amended at 49 FR 38051, September 26, 1984). Following the end of the supplemental comment period, the Director will make a final permit decision and notice will be published in the **Federal Register**.

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

Dated: March 24, 2006.

**Miguel I. Flores,**

*Director, Water Quality Protection Division, EPA Region 6.*

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

[Docket No. 06-05]

## FEDERAL RESERVE SYSTEM

## FEDERAL DEPOSIT INSURANCE CORPORATION

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

[No. 2006-12]

### Joint Report: Differences in Accounting and Capital Standards Among the Federal Banking Agencies; Report to Congressional Committees

**AGENCIES:** Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Notice.

**SUMMARY:** The OCC, the Board, the FDIC, and the OTS (the Agencies) have prepared this report pursuant to section 37(c) of the Federal Deposit Insurance Act. Section 37(c) requires the Agencies to jointly submit an annual report to the Committee on Financial Services of the United States House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate describing differences between the capital and accounting standards used by the Agencies. The report must be published in the **Federal Register**.

#### FOR FURTHER INFORMATION CONTACT:

**OCC:** Nancy Hunt, Risk Expert (202-874-4923), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**Board:** John F. Connolly, Senior Supervisory Financial Analyst (202-452-3621), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

**FDIC:** Robert F. Storch, Chief Accountant (202-898-8906), Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**OTS:** Michael D. Solomon, Senior Program Manager for Capital Policy (202-906-5654), Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** The text of the report follows:

### Report to the Committee on Financial Services of the United States House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate Regarding Differences in Accounting and Capital Standards Among the Federal Banking Agencies

#### Introduction

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) ("the Federal banking agencies" or "the agencies") must jointly submit an annual report to the Committee on Financial Services of the U.S. House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate describing differences between the accounting and capital standards used by the agencies. The report must be published in the **Federal Register**.

This report, which covers differences existing as of December 31, 2005, is the fourth joint annual report on differences in accounting and capital standards to be submitted pursuant to section 37(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831n(c)), as amended. Prior to the agencies' first joint annual report, section 37(c) required a separate report from each agency.

Since the agencies filed their first reports on accounting and capital differences in 1990, the agencies have acted in concert to harmonize their accounting and capital standards and eliminate as many differences as possible. Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803) also directs the agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. The results of these efforts must be "consistent with the principles of safety and soundness, statutory law and policy, and the public interest." In recent years, the agencies have revised their capital standards to address changes in credit and certain other risk exposures within the banking system and to align the amount of capital institutions are required to hold more closely with the credit risks and certain other risks to which they are exposed. These revisions have been made in a uniform manner whenever possible and practicable to minimize interagency differences.