

TABLE 1.—NITRAPYRIN PRODUCT REGISTRATION WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Company
62719-019	N-Serve 24E	Dow AgroSciences

Table 2 of this unit includes the name and address of record for the registrant of the product listed in Table 1 of this unit.

TABLE 2—REGISTRANT REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
62719	Dow AgroSciences 9330 Zionsville Road Indianapolis, IN 46248-1054

#### IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

#### V. Procedures for Withdrawal of Request and Considerations for Reregistration of Nitrapyrin

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before July 13, 2007. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

#### VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

In any order issued in response to this request for cancellation of a product

registration, EPA proposes to include the following provisions for the treatment of any existing stocks of the products identified or referenced in Table 1: The registrant will be allowed to sell and distribute the subject products for two years from the date that the cancellations are made final. In addition, existing stocks of nitrapyrin N-Serve 24E may be sold or used until they are depleted.

If the request for voluntary cancellation is granted as discussed above, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

#### List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 30, 2007.

**Peter Caulkins**,

*Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

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**BILLING CODE 6560-50-S**

#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-8325-9]

#### Final NPDES General Permits for Small Municipal Separate Storm Sewer Systems (sMS4s) in New Mexico, Indian Country Lands in New Mexico and Indian Country Lands in Oklahoma; Minor Revisions and Corrections

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

**ACTION:** Notice of final NPDES General Permits and minor revisions and corrections.

**SUMMARY:** EPA Region 6 is announcing issuance of final National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges from small municipal separate storm sewer systems (sMS4s) located in the State of New Mexico (NMR040000), Indian Country Lands in New Mexico (NMR04000I), and Indian Country Lands in Oklahoma (OKR04000I). Hereinafter, the term "permit" will be used to refer collectively to all three general permits. A document containing the Agency's responses to public comments on the proposed permit is available. The permit will authorize the discharges from sMS4s in accordance with the terms and conditions described therein. This notice also revises the effective and expiration dates of the permit, as well as the Notice of Intent deadline, and announces minor revisions and corrections to the final permit and supporting documents.

**DATES:** Following 30-day notice and comment periods on the draft permit and a supplemental notice containing revisions to the draft permit, notice of the final permit was originally published in New Mexico and Oklahoma newspapers in October 2006, with a stated effective date of January 1, 2007. The newspaper notices stated that NOIs for coverage under the final permit were due to EPA by April 1, 2007. Due to unforeseen delays in noticing the final permit in the **Federal Register**, EPA is through today's notice revising both the effective date of the final permit and the deadline for filing NOIs. The revised effective date for the general permit is July 1, 2007, and NOIs to be covered will be due October 1, 2007. The revised expiration date of the permit is June 30, 2012. In accordance with 40 CFR 23.2, this action is considered issued for purposes of judicial review as of 1 p.m. eastern daylight time (e.d.t.) on June 27, 2007. Under section 509(b)(1) of the Clean Water Act (CWA) and 40 CFR 124.19, judicial review of the Agency's actions relating to the issuance of an NPDES general permit is available in the United States Court of Appeals within 120 days after the decision is final for the purposes of judicial review. Under CWA section 509(b)(2), the final permit may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

**ADDRESSES:** The administrative record is available for inspection and copying at the EPA Region 6 offices at 1445 Ross Ave., Dallas, Texas between 9 a.m. and 4 p.m., Monday-Friday, excluding legal holidays. Please contact Ms. Diane

Smith at (214) 665-2145 to schedule a time to review or copy documents. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:**

Additional information concerning the final permit may be obtained from Ms. Diane Smith, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-2145. The final general permit, Response to Comments document, draft permit fact sheet, supplemental proposal on the draft permit, and other supporting information and guidance are available online via <http://www.epa.gov/region6/6wq/npdes/sw/sms4/index.htm>.

**SUPPLEMENTARY INFORMATION:**

The following fact sheet provides background information and explanation for today's notice of the final sMS4 general permit issuance, including a summary Response to Comments regarding comments on the draft permit and changes made to the final permit. Additional information on the statutory and regulatory basis for the permit are found in the fact sheet for the proposed permit, the supplemental proposal on the draft permit, the **Federal Register** notices on the draft permit and supplemental proposal, and the response to comments documents referenced above. Today's notice also makes certain revisions and minor corrections/clarifications to the response to comments document and the permit.

**I. Background**

In the 1987 amendments to the CWA, Congress established a phased and tiered approach for addressing pollutants in point source storm water discharges (CWA § 402(p)). Phase I of the NPDES storm water program included requirements for large and medium municipal separate storm systems (MS4s) (55 FR 47990) and Phase II included requirements for small MS4s (64 FR 68722). Today's final sMS4 general permit covers storm water discharges from MS4s meeting the definition of a "small municipal separate storm sewer system" at 40 CFR 122.26(b)(16) and any designated under 40 CFR 122.32(a)(1) or 40 CFR 122.32(a)(2). A MS4 consists of a system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made 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 sMS4 typically serves a population of less than 100,000. Only those sMS4s 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 permit for sMS4s 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 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 general permits to authorize discharges from sMS4s: (1) Public availability of 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 NOIs & 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 sMS4s. Today's final general permit contains conditions responsive to the partial remand of the Phase II regulations and issues raised in the Court's decision and is consistent with EPA's Office of Wastewater Management Guidance. The final general permit also contains conditions responsive to public comments on the proposed permit and state and tribal certification of the permit under Section 401 of the CWA.

**II. Summary of Significant Changes From the Draft Permits**

The following is a list of significant changes from the proposed permit. The rationales for these changes, as well as information about other less significant changes, are discussed below and in the Response to Comments document available as indicated in the "**FOR FURTHER INFORMATION CONTACT**" section above. Additional minor clarifications and corrections made to the final permit are discussed separately in Section III.

1. Coverage under the general permit for Indian Country in New Mexico (NMR04000I) will not be available for discharges on the Pueblo of Sandia.
2. Conditions applicable only to specific state and tribal areas have been added to Part 8. These conditions generally consist of requirement for MS4s within their jurisdiction to provide documents to a State or Tribal agency. Under Part 8.1.2, all dischargers in the Albuquerque Urbanized Area are required to submit copies of NOIs, annual reports, and certain other information to the Pueblo of Isleta. Due to denial of CWA § 401 certification of the permit, areas covered by the permit do not include the Pueblo of Sandia.
3. Part 1.2.3 was added to the permit to provide for enhanced public access to and ability to comment on the NOI (and Storm Water Management Program attachment).
4. Part 1.2.4 was added to provide a mechanism for the MS4 operator to provide EPA with responses to any comments in order to assist EPA in making permit coverage decisions.
5. The eligibility requirements related to endangered species protection at Part 1.5 and Appendix A have been revised.

Only where no listed species or critical habitat are in proximity to the MS4's discharges or discharge-related activities will coverage be available without at least an informal consultation with the U.S. Fish and Wildlife Service.

6. Part 2.1.3 has been revised to specify that permit coverage occurs only after written notification by the Director.

7. NOI procedures in Part 3 have been revised. NOIs will be due by October 1, 2007. There will be a 30-day opportunity for the public to review, comment, and request a public meeting/hearing on individual NOIs, and Part 2.1.3 has been changed so coverage will not be effective until notification by the Director. EPA has been alerted by several MS4 operators that satisfying permit eligibility requirements, especially with regard to protection of endangered species, could prevent some SMS4s from meeting the NOI deadline. A MS4 operator is prohibited by the terms of the permit from submitting an NOI until all eligibility conditions have been met. Part 3.1.4 of the permit does allow submittal of late NOIs, which would provide earlier discharge authorization than the individual permit issuance process. To allow more time to work through eligibility issues and provide time for local notice and review of the NOI 60 days prior to submittal, the NOI due date has been set as October 1, 2007. MS4s having difficulty meeting the eligibility conditions for submittal of an NOI, should notify EPA (see address in Part 3.3) of the circumstances causing the delay and progress made to date and then proceed as expeditiously as possible with NOI submittal under Part 3.1.4. For clarification, Part 1.2.3.1 requires local notice and opportunity for public review of the NOI and attachments at least 60 days prior to submittal, with the expectation, but not requirement, that the local review period would be 30 days with the remaining 30 days used by the MS4 operator to review and respond to local comments.

8. Part 5.2.4.3 has been revised to clarify that construction site operators are ultimately responsible for performance of BMPs at their construction site.

9. Part 5.6 has been revised to clarify requirements for analytical vs. non-analytical monitoring and to include more specific monitoring and/or data collection requirements for discharges to impaired waters or waters where an applicable total maximum daily load (TMDL) has been established. A proposed monitoring/assessment plan must be submitted to the Director as part of the first annual report. For discharges to waters on the State's CWA

303(d) list of impaired waters or for which a TMDL has been developed or approved by EPA, the Monitoring/Assessment Plan must include collection of information on the levels of the pollutant(s) of concern in the discharge. Collection of analytical data will be required for MS4s discharging to waters with TMDLs that have specific allocations for the MS4 operator's discharges. Dischargers to impaired waters prior to development of a TMDL or waters with TMDLs that do not specify an allocation for MS4s will be required to gather analytical data, but have the flexibility to participate in cooperative sampling programs or take advantage of existing representative data. Monitoring or assessment recommendations in a TMDL may be used in the proposed monitoring/assessment plan.

10. Part 5.2.4.3 has been revised to clarify that while the MS4 will be reviewing site plans, the construction site operator is ultimately responsible for the performance of the storm water controls selected for the project.

11. Part 5.8.1 contains revisions and a new Part 5.8.1.7 has been added to help ensure the public will have the opportunity to review and provide local input on the annual reports and revisions to the storm water management program as it evolves. The due dates for the annual reports required by Part 5.8.1 have been changed to October 1, 2008, and annually on October 1st thereafter. The reporting period for the Annual Report has been set as July 1—June 30th. Note that this change in the reporting period coincides with the fiscal year used by many municipalities in New Mexico and should ease report preparation for items tracked locally on a fiscal year basis for budgetary purposes.

12. Monitoring requirements at Part 5.6 have been revised to provide clearer expectations and requirements for analytical vs. non-analytical monitoring and assessment programs, particularly with regard to discharges to impaired waters and waters for which a TMDL has been developed or approved. For example, where a specific waste load allocation under a TMDL applies to the MS4's discharges, analytical monitoring will be required to be included in the MS4's monitoring and assessment plan.

13. Addendum E was added to outline the process for providing comments and/or requesting a public meeting/hearing on NOIs during the 30-day public review period described in Section B of Addendum E. Note that a minor correction to Section B is described below.

### III. Revisions and Corrections to the Permit and Response to Comments Documents

EPA has also made typographical and other minor corrections/clarifications to the permit and Response to Comment documents.

#### *Revisions and Corrections to Permit*

1. Simple typographical corrections (e.g., spelling, format, grammar, etc.) have been made to the permit.

2. A footnote has been added to Part 3.1.1 to provide direction to MS4 operators who are not able to complete all activities necessary to meet permit eligibility in time to meet the due date for NOIs. For example, EPA recognizes that completion of Endangered Species Act consultations can proceed along time lines outside the control of MS4 operator, but are a prerequisite for submittal of an NOI.

3. Consistent with Response to Comment No. 29 and to correct an editorial error, sections of Part 5.2 have been corrected so requirements under each of the six minimum control measures to identify parties responsible for implementing that portion of the Storm Water Management Program all consistently allow for identification of either the “\* \* \* person(s) or position(s) responsible \* \* \*.”

4. Part 5.7.3, described in Response to Comment No. 23, was inadvertently omitted from the final permit due to a typographical error and has been reinserted. Part 5.7.3 simply highlights the requirement, not as clearly stated in Part 5.7.1 and 5.7.2, to maintain records related to how the permittee determined permit eligibility with regard to Parts 1.4.6, 1.5, and 1.6. No additional record keeping burden is imposed, but the likelihood of permit non-compliance due to failure to recognize the duty to retain such records has been reduced.

5. Part 5.8.1. has been revised to include a footnote offering the option to base the the Annual Report on the permittee's fiscal year rather than the default July-June reporting year, provided the permittee notifies EPA by the first October 1st following permit authorization that this option will be used and confirms the dates of the permittee's fiscal year. Annual Reports based on alternative fiscal years must be submitted no later than (90) days following the end of the fiscal year. During the November 2006, public meeting on the final permits, attendees questioned whether the permit could allow reporting on a fiscal year basis to avoid the additional burden of tracking and reporting information on a calendar year basis for permit purposes when

most information was tracked locally on a fiscal year basis for budgetary purposes. The revised July 1-June 30 annual report period will accommodate most MS4s using the New Mexico fiscal year, but some MS4s may have alternative fiscal years, so flexibility to use alternative fiscal years has been added. This flexibility in the annual report period and due date will still allow the public and regulators to assess the permittee's activities in 12 month increments. Requiring the Annual Report to be submitted within 90 days following the end of the fiscal year will ensure that information in the report will not be stale by the time the public and regulatory agencies review it and is consistent with the time frame in the permit. Having a reporting period coinciding with the local fiscal year may also make local review and public input less confusing.

6. Consistent with Response to Comment No. 22, Part 1.4.6, second paragraph, first sentence has been corrected to replace “\* \* \* should consult \* \* \*” with “\* \* \* must consult \* \* \*.”

7. In Addendum A, references to the U.S. Fish and Wildlife Web site for information on endangered species has been updated to the current link: <http://www.fws.gov/southwest/es/EndangeredSpecies/lists/>.

8. Consistent with Response to Comment No. 33, Addendum C the correct cross references in Item 4 to Part 1.4.6 and Item 7 to Part 5.2 have been added.

9. Addendum E, Section B, has been modified to clarify that the 30-day deadline for submittal of comments on an NOI begins when the NOI information is posted on EPA Region 6's small MS4 NOI web page. The word “filed” was inadvertently used in the same sentence in two separate ways. Comments will be due “\* \* \* within thirty (30) days of the date the NOI is posted on the Web site in Section A.”

10. Part 2.2.3.6 has been corrected to provide the address for submittal of Notices of Termination and remove a reference regarding submittal of copies to the State of New Mexico (which is independently required under Part 8.1.1).

#### *Revisions and Corrections to the Response to Comments Documents*

1. Response to Comment No. 9 should refer to Response to Comment No. 48 instead of No. 37.

2. Due to an editing error, the last paragraph in Response to Comment No. 28 was inadvertently included in the final document. The final permit did not include a table of expectations for

interim progress (which in any event would have been in Part 5 and not Part 4). EPA determined that a single set of expectations could not take into account what programs were already being implemented and what challenges an individual MS4 would face in developing and implementing their programs. Due to the subjective nature of “credible interim progress,” the Director will need to evaluate this requirement on a case-by-case basis taking into account the unique situation at a particular MS4. EPA expects that programs will consist of a combination of existing programs, initial effort programs, and schedules for final programs. For example, the initial programs could be based on activities currently underway, activities which can be implemented in the short term (i.e., with existing resources, without changes in ordinances, by relying on available guidance and materials, etc.), and pilot programs. The initial program could also include activities (e.g., illicit discharge screening of the system, etc.) to help prioritize activities and refine options as the final program evolves. In general, EPA would expect that activities such as public involvement would have to begin early in the permit cycle to allow for public input on the final program. The public education, illicit discharge detection and elimination, and proper operation and maintenance/good housekeeping at municipal operations programs would not be expected to take 2–3 years to have in place, with initial program implementation possible earlier. The full construction and post-construction final programs, unless existing programs can be used, would be expected to take 3–5 years to implement due to the need to develop (or adapt) and adopt local standards, rules/ordinances, etc.

3. Response to Comment No. 32 should refer to Part 5.8.1.5 instead of Part 5.6.1.

4. Revisions discussed in Sections II and III supercede any conflicting responses in the September 29, 2006, Response to Comments document.

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

Dated: May 31, 2007.

**Miguel I. Flores,**

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

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## **ENVIRONMENTAL PROTECTION AGENCY**

[Docket ID Number OECA 2005-0081; FRL-8325-1]

### **Safe Drinking Water Act: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding Shell Oil Company**

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

**ACTION:** Notice.

**SUMMARY:** EPA has entered into a consent agreement with Shell Oil Company (“Shell” or “Respondent”) to resolve violations of the Safe Drinking Water Act (“SDWA”) and the Resource Conservation and Recovery Act (“RCRA”) and their implementing regulations.

The Administrator is hereby providing public notice of this Consent Agreement and proposed Final Order, and providing an opportunity for interested persons to comment on the SDWA portions of this Consent Agreement in accordance with SDWA section 1423(c)(3)(B).

**DATES:** Comments are due on or before July 13, 2007.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Section I. B of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Lynn S. Holloway, Waste and Chemical Enforcement Division (2246-A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564-4241; fax: (202) 564-0019; e-mail: [Holloway.Lynn@epa.gov](mailto:Holloway.Lynn@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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

###### *A. How Can I Get Copies of This Document?*

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OECA-2005-0081.

The official docket consists of the Consent Agreement, proposed Final Order, and any public comments received. The official public docket is the collection of materials that is available for public viewing at the Enforcement and Compliance Docket Information Center (ECDIC) in the EPA Docket Center (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open