

provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

#### B. Public Meeting

EPA's Office of Pesticide Programs performs ecological risk assessments under the authority provided in FIFRA, as amended by the FQPA, to ensure that a pesticide does not pose any unreasonable risks to the environment. The Agency utilizes a combination of data submitted by pesticide manufacturers, open literature, and computer models to conduct risk assessments and to evaluate the potential hazards posed by a pesticide to non-target species and the environment. Models are an essential part of the risk assessment process because they allow the Agency to perform nationwide environmental exposure assessments in the absence of nationwide spatially explicit monitoring data for each chemical.

The most recent ecological risk assessment for antimicrobial uses of copper, completed in 2010 as part of its reregistration process, used the "Biotic Ligand Model" to estimate aqueous exposures from wood preservative and roofing shingle uses and the "Marine Antifoulant Model to Predict Environmental Concentrations" (MAM-PEC Model; version 2) to evaluate exposure from antifoulant uses of copper. The Agency anticipates conducting a complete ecological risk assessment, including an endangered species assessment, for all pesticidal uses of copper through its registration review process. The Final Work Plan for the registration review of copper was published in March 2011. Documents related to the reregistration and registration review of copper can be found at [www.regulations.gov](http://www.regulations.gov) in dockets EPA-HQ-OPP-2005-0558 and EPA-HQ-OPP-2010-0212, respectively.

The TERRA Watershed Model has been proposed by the American Chemistry Council as a refined model for estimating environmental exposure from the use of copper as an antimicrobial pesticide. The TERRA Model uses a generalized watershed rainfall-runoff, sediment transport, and contaminant transport modeling framework. It is a spatially distributed watershed model which allows for

multiple use patterns of antimicrobial copper to be simulated simultaneously across a watershed, thereby providing a cumulative aqueous exposure profile from antimicrobial uses of copper at any point in the watershed.

The purpose of the SAP Consultation is to obtain an independent evaluation of the TERRA watershed-scale model and to gain advice on the application of TERRA as a regulatory model, specifically as applied to the antimicrobial copper risk assessment.

#### C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to FIFRA SAP, FIFRA SAP composition (*i.e.*, members and ad hoc members for this meeting), and the meeting agenda will be available by approximately late September. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at <http://www.regulations.gov> and the FIFRA SAP homepage at <http://www.epa.gov/scipoly/sap>.

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP Web site or may be obtained from the OPP Regulatory Public Docket at <http://www.regulations.gov>.

#### List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 19, 2011.

**Frank Sanders,**

*Director, Office of Science Coordination and Policy.*

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#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-9447-5]

#### Modification of the Expiration Date for the National Pollutant Discharge Elimination System General Permit for Stormwater Discharges From Construction Activities on Tribal Lands Within the Southeastern United States

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

**ACTION:** Final Notice.

**SUMMARY:** EPA Region 4 is modifying the expiration date of the National Pollutant Discharge Elimination System (NPDES) general permit authorizing the discharge of stormwater from construction activities on Tribal Lands within the states of Alabama, Florida, Mississippi and North Carolina. This modification will extend the NPDES construction general permit (CGP), hereinafter referred to as "the Region 4 CGP," so that it expires on September 1, 2012 instead of August 31, 2011. The purpose of extending the expiration date is to ensure that there is no lapse in permit coverage prior to the effective date of the issuance of a new permit, hereinafter referred to as "the new National CGP," which was proposed as draft for public review and comment on April 25, 2011. The Region 4 CGP was issued on September 1, 2009, and the modification of the expiration date makes it a three-year permit. By Federal law, no NPDES permit may be issued for a period that exceeds five years. The extension complies with this restriction.

**DATES:** EPA is finalizing a modification to the Region 4 CGP that extends the permit until September 1, 2012 instead of August 31, 2011. The Region 4 CGP will now expire at midnight, on September 1, 2012, or on the effective date of the new National CGP, whichever is earlier.

#### FOR FURTHER INFORMATION CONTACT:

Alanna Conley or Michael Mitchell of the Stormwater and Nonpoint Source Section, Water Protection Division, Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; *telephone number:* (404) 562-9443 or (404) 562-9303; *fax number:* (404) 562-8692; *e-mail address:* [conley.alanna@epa.gov](mailto:conley.alanna@epa.gov) or [mitchell.michael@epa.gov](mailto:mitchell.michael@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does this action apply to me?

If a discharger chooses to apply for coverage under the Region 4 CGP, the permit provides specific requirements for preventing contamination of waterbodies from stormwater discharges from the following construction activities:

Category	Examples of affected entities	North American Industry Classification System (NAICS) Code
Industry .....	Construction site operators disturbing 1 or more acres of land, or less than 1 acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more, and performing the following activities:	
	Building, Developing and General Contracting .....	236
	Heavy Construction .....	237

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of activities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the definition of “construction activity” and “small construction activity” in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Eligibility for coverage under the Region 4 CGP would be limited to operators of “new projects” or “unpermitted ongoing projects.” A “new project” is one that commences after the effective date of the Region 4 CGP. An “unpermitted ongoing project” is one that commenced prior to the effective date of the Region 4 CGP, yet never received authorization to discharge under the previous CGP or any other NPDES permit covering its construction-related stormwater discharges. The Region 4 CGP is effective only in those areas where EPA Region 4 is the permitting authority, which includes all Indian Country Lands within the states of Alabama, Florida, Mississippi, and North Carolina. A list of eligible areas is included in Appendix B of the Region 4 CGP.

*B. How can I get copies of this document and other related information?*

You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>. Electronic versions of the Region 4 CGP and fact sheet are available at EPA Region 4’s stormwater Web site at: <http://www.epa.gov/region4/water/permits/stormwater.html>.

**II. Background of Permit**

*A. Statutory and Regulatory History*

Section 402(p) of the Clean Water Act (CWA) directs EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. 33 U.S.C. 1342(p). EPA published two regulations, on November 16, 1990 (the “Phase I rule”, see 55 FR 47990) and on December 8, 1999 (the “Phase II rule”, see 64 FR 68722), which resulted in requiring NPDES permits for discharges from construction sites disturbing at least one acre but less than five acres, including sites that are less than one acre but are part of a larger common plan of development or sale that will ultimately disturb at least one acre but less than five acres. See 40 CFR 122.26(b)(14)(x) and 122.26(b)(15)(i).

*B. The Relevance of EPA’s “C&D Rule” to the Region 4 CGP*

NPDES permits issued for construction stormwater discharges are required under Section 402(a)(1) of the CWA to include conditions for meeting technology-based effluent limits established under Section 301 and, where applicable, Section 306 of the CWA. Once an effluent limitations guideline or new source performance standard is promulgated in accordance with these sections, NPDES permits issued by the NPDES permitting authorities must incorporate requirements based on such limitations and standards. See 40 CFR 122.44(a)(1). Prior to the promulgation of national effluent limitations guidelines or new source performance standards, permitting authorities incorporate technology-based effluent limitations on a best professional judgment basis. CWA section 402(a)(1)(B); 40 CFR 125.3(a)(2)(ii)(B).

On December 1, 2009, EPA published final regulations establishing technology-based Effluent Limitations Guidelines (ELGs) and New Source Performance Standards (NSPS) for the Construction & Development (C&D) point source category. See 40 CFR Part 450, and 74 FR 62996 (December 1, 2009). The Construction & Development Rule, or “C&D rule”, became effective

on February 1, 2010; therefore, all NPDES construction permits issued by EPA or states after this date must incorporate the C&D rule requirements.

Because EPA issued the Region 4 CGP prior to the effective date of the C&D rule, the Agency is not required by the CWA and 40 CFR 122.44(a)(1) to incorporate the C&D rule requirements into the current permit. However, EPA is required to incorporate the C&D rule requirements into the new National CGP. EPA published for public comment on April 25, 2011 a draft of the new National CGP, which includes new requirements implementing the C&D rule. For more information, see 76 FR 22882.

*C. Stay of the C&D Rule Numeric Limit*

The C&D rule included non-numeric requirements for erosion and sediment control, stabilization, and pollution prevention (see 40 CFR 450.21(a) thru (f)), and for the first time, a numeric limitation on the discharge of turbidity from active construction sites (see 40 CFR 450.22). Since its promulgation, EPA discovered that the data used to calculate the numeric limit for turbidity were misinterpreted, and that it was necessary to recalculate the numeric limit.

On August 12, 2010, EPA filed a motion with the U.S. Court of Appeals for the Seventh Circuit, requesting that the Court issue an order vacating and remanding to the Agency limited portions of the final C&D rule. On August 24, 2010, the U.S. Court of Appeals for the Seventh Circuit remanded the matter to EPA but did not vacate the numeric limit. On September 9, 2010, the National Association of Home Builders (NAHB) filed a motion for clarification (which EPA did not oppose) asking the court to (1) vacate the limit and (2) hold the case in abeyance until February 15, 2012 instead of remanding the matter to EPA. On September 20, 2010, the court granted the motion in part by ruling to hold the matter in abeyance pending EPA consideration of the numeric limit and the other remand issues, but the court did not vacate the numeric limit. Instead, the court stated that “EPA may

make any changes to the limit it deems appropriate, as authorized by law.”

EPA issued a direct final rule staying the current numeric limit and a companion proposed rule proposing a stay, and the stay took effect on January 4, 2011, resulting in an indefinite postponement of the implementation of the 280 NTU limit. The Agency is currently developing a proposed rule proposing the recalculated limit. If the numeric limit becomes effective prior to the issuance of the new National CGP, EPA must by law incorporate the applicable numeric limit into the new National CGP.

#### *D. Summary of the Region 4 CGP Issued in 2009*

EPA announced the issuance of the 2009 Region 4 CGP on August 26, 2009. See 74 FR 43120. Construction operators choosing to be covered by the Region 4 CGP must certify in their notice of intent (NOI) that they meet the requisite eligibility requirements, described in Subpart 1.3 of the permit. If eligible, operators are authorized to discharge under this permit in accordance with Part 2. Permittees must install and implement control measures to meet the effluent limits applicable to all dischargers in Part 3, and must inspect such stormwater controls and repair or modify them in accordance with Part 4. The permit in Part 5 requires all construction operators to prepare a stormwater pollution prevention plan that identifies all sources of pollution and describes control measures used to minimize pollutants discharged from the construction site. Part 6 details the requirements for terminating coverage under the permit.

EPA Region 4 issued the Region 4 CGP in 2009 to replace the expired CGP, issued in 2004, for operators of new and unpermitted ongoing construction projects. The geographic coverage and scope of eligible construction activities are listed in Appendix B of the Region 4 CGP.

### **III. Extension of Region 4 CGP Expiration Date**

#### *A. What is EPA's rationale for the modification of the region 4 CGP for an extension of the expiration date?*

As stated above, EPA is modifying the Region 4 CGP by extending the expiration date of the permit to September 1, 2012. This extension is necessary in order to provide sufficient time for finalization of the new National CGP which will be issued by EPA Region 4 and the other EPA regional offices and would also provide coverage to eligible existing and new

construction projects in all areas of the country where EPA is the NPDES permitting authority (*i.e.*, other Indian Lands, Idaho, Massachusetts, New Hampshire, New Mexico, Puerto Rico, Washington, DC, and U.S. territories and protectorates). The new National CGP will incorporate for the first time new effluent limitation guidelines and new source performance standards, which EPA promulgated in December 2009. Once the new National CGP is effective, eligible existing and new construction projects on Tribal lands within Region 4, will be regulated under the new National CGP. The extension of the expiration date of the Region 4 CGP is necessary in order to make up for a delay of several months in the issuance process of the new National CGP caused by the initial uncertainty surrounding the error in calculating the 280 NTU limit and the appropriate way for EPA to address it. This delay made it a near certainty that, given even the most optimistic timeframe for finalizing the new National CGP, EPA would not have been able to finalize the new CGP by the August 31, 2011 expiration date of the 2009 Region 4 CGP. EPA believes that the proposed extension of the expiration date of the Region 4 CGP to September 1, 2012, will provide the sufficient time for the Agency to finalize the new National CGP.

EPA believes it is imperative that EPA has sufficient time to incorporate the C&D rule requirements into the new National CGP prior to the existing permit's expiration date. If EPA does not issue the new National CGP before the expiration date of the Region 4 CGP, no new construction projects could receive general permit coverage between August 31, 2011, and the effective date of the new National CGP, leaving individual NPDES permits as the only available option for permitting new projects. The sole reliance on individual permits would mean that discharge authorizations would almost certainly be delayed due to the greater amount of time and Agency resources that are required for developing and issuing individual permits. In turn, construction projects that need to begin construction activities on or after midnight August 31, 2011, for the Region 4 CGP, would be delayed for an uncertain amount of time until EPA can review their individual permit application and issue the necessary permits. Rather than risk detrimental delays to new construction projects, EPA Region 4 has decided that it is advisable to instead extend the expiration date until September 1, 2012.

#### *B. EPA's Authority To Modify NPDES Permits*

EPA regulations establish when the permitting authority may make modifications to existing NPDES permits. In relevant part, EPA regulations state that “[w]hen the Director receives any information \* \* \* he or she may determine whether or not one or more of the causes listed in paragraph (a) \* \* \* of this section for modification \* \* \* exist. If cause exists, the Director may modify \* \* \* the permit accordingly, subject to the limitations of 40 CFR 124.5(c).” 40 CFR 122.62. For purposes of this **Federal Register** notice, the relevant cause for modification is at 40 CFR 122.62(a)(2), which states that a permit may be modified when “[t]he Director has received new information” and that information “was not available at the time of permit issuance \* \* \* and would have justified the application of different permit conditions at the time of issuance.” Pursuant to EPA regulations, “[w]hen a permit is modified, only the conditions subject to the modification are reopened.” 40 CFR 122.62.

In the case of the Region 4 CGP, a permit modification is justified based on the new information EPA received following the issuance of the permit, and more specifically, in terms of the delay to the permit process associated with the discovery of the error in the numeric turbidity limit and the Agency's decision to stay the numeric turbidity limit. If this information was available at the time of issuance of the Region 4 CGP, it would have justified EPA establishing an expiration date for the Region 4 CGP that was later than August 31, 2011. As a result, cause exists under EPA regulations to justify modification of the Region 4 CGP to extend the permit until midnight, on September 1, 2012, or on the effective date of the proposed new National CGP, whichever is earlier.

EPA notes that, by law, NPDES permits cannot be extended beyond 5 years. 40 CFR 122.46. The extension of the expiration date of the Region 4 CGP complies with this restriction. The Region 4 CGP was issued with an effective date of September 1, 2009. With the new expiration date of September 1, 2012, the Region 4 CGP will still have been in effect for less than the 5-year limit.

#### *C. Response to Comments*

EPA did not receive comment on the proposed extension of the Region 4 CGP expiration date.

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

Signed this 25th day of July 2011.

**James D. Giattina,**

*Director, Water Protection Division, U.S. Environmental Protection Agency, Region 4.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9447-9]

### New York State Prohibition of Discharges of Vessel Sewage; Receipt of Petition and Tentative Affirmative Determination

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

**ACTION:** Notice; Receipt of Petition and Tentative Affirmative Determination.

**SUMMARY:** Notice is hereby given that, pursuant to Clean Water Act, Section 312(f)(3) (33 U.S.C. 1322(f)(3)), the State of New York has determined that the protection and enhancement of the quality of the Jamaica Bay in the New York City metropolitan area requires greater environmental protection, and has petitioned the United States Environmental Protection Agency, Region 2, for a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for those waters, so that the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters.

The New York State Department of Conservation (NYSDEC) on behalf of the New York City Department of Environmental Protection (NYCDEP) has proposed to establish a Vessel Waste No-Discharge Zone (NDZ) for the Jamaica Bay that covers an area of approximately 20,000 acres (17,177 acres of open water and 2,695 acres of upland islands and salt marshes). It is bounded on the west and northwest by Brooklyn, on the north and northeast by Queens. The northeastern and southeastern corners of the Bay are bordered by Nassau County. The northern shore of the Rockaway Peninsula, a part of Queens, forms the southern boundary. The Bay is connected to the Atlantic Ocean through the Rockaway Inlet and has a tidal range of approximately 5 to 6 feet. It measures approximately 10 miles at its widest point east to west and approximately 4 miles at its widest point north to south. The mean depth of the Bay is approximately 13 feet with maximum

depths reaching 30 to 50 feet in navigation channels and borrows pit areas. Eight tributaries empty into Jamaica Bay—Sheepshead Bay, Paerdegat Basin, Fresh Creek, Hendrix Creek, Spring Creek, Shellbank Basin, Bergen Basin, and Thurston Basin.

**DATES:** Comments regarding this tentative determination are due by September 2, 2011.

**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail:* [chang.moses@epa.gov](mailto:chang.moses@epa.gov).

Include "Comments on Tentative Affirmative Decision for NYC JAMAICA BAY NDZ" in the subject line of the message.

- *Fax:* 212-637-3891.

- *Mail and Hand Delivery/Courier:*

Moses Chang, U.S. EPA Region 2, 290 Broadway, 24th Floor, New York, NY 10007-1866. Deliveries are only accepted during the Regional Office's normal hours of operation (8 a.m. to 5 p.m., Monday through Friday, excluding federal holidays), and special arrangements should be made for deliveries of boxed information.

**FOR FURTHER INFORMATION CONTACT:**

Moses Chang, (212) 637-3867, *e-mail address:* [chang.moses@epa.gov](mailto:chang.moses@epa.gov).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the State of New York (NYS or State) has petitioned the United States Environmental Protection Agency, Region 2, (EPA) pursuant to section 312(f)(3) of Public Law 92-500 as amended by Public Law 95-217 and Public Law 100-4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the open waters and tributaries of Jamaica Bay, so that the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters. Adequate pumpout facilities are defined as one pumpout station for 300-600 boats under the Clean Vessel Act: Pumpout Station and Dump Station Technical Guidelines (**Federal Register**, Vol. 59, No. 47, March 10, 1994).

Jamaica Bay is the largest estuarine water body in the New York City metropolitan area and one of the largest coastal wetland ecosystems in New York State. The open waters and tributaries within Jamaica Bay provide important natural and recreational resources for boating and recreational activities that contribute significantly to the local and regional economy. In 2005, the Jamaica Bay Watershed Protection Plan (JBWPP) was put into motion by the City Council of New York City under Local Law 71 (LL 71). The objective of LL 71 is to ensure a holistic

watershed approach toward restoring and maintaining the water quality and ecological integrity of the Bay. The JBWPP recommends management actions for protecting and improving the health of the Bay, *e.g.* adoption of appropriate regulations to mitigate the impacts of boat vessel waste discharges.

Jamaica Bay is a component of the National Park Service's (NPS) Gateway National Recreation Area (GNRA). A significant portion of the Bay, approximately 9,100 acres, has also been designated by the NPS as the Jamaica Bay Wildlife Refuge and is designated by the New York State Department of State (NYS DOS) as a Significant Coastal Fish and Wildlife Habitat. The diversity of bird species and breeding habitats within the Bay were important factors in these designations. The Jamaica Bay Wildlife Refuge was also the first site to be designated by the National Audubon Society as an "Important Bird Area." It is clear that Jamaica Bay is currently functioning as a regional habitat for many different species of wildlife. In combination with other water quality improvement initiatives, the NDZ designation will further enhance the recreational and ecological benefits of Jamaica Bay, potentially attracting more visitors to the Bay.

In order for EPA to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the New York State areas of the Jamaica Bay, the State must demonstrate that the pumpout-to-vessel ratio does not exceed 1:600.

In its petition, the State described the recreational vessels that use the Bay, and the pumpout facilities that are available for their use. Based on a review of NYS Department of Motor Vehicle boat registrations, site visits to marinas and reviewing high resolution orthoimagery of Jamaica Bay, NYCDEP has determined that there are approximately 1,200 to 1,500 boats that utilize the Bay throughout the boating season. This number may include a significant number of transient vessels and not only boats that are permanently moored in Jamaica Bay.

Jamaica Bay is primarily used for recreational boating with very little commercial traffic. The few commercial vessels that do enter the bay are primarily sightseeing and fishing vessels which, pursuant to New York City regulations, must use private boat pumpout services to unload sewage within the Bay. Therefore, the boat pumpouts provided by NYCDEP within Jamaica Bay are utilized for recreational vessels only.