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Part III

Environmental Protection Agency

National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit Modification for Industrial Activities; Notice

ENVIRONMENTAL PROTECTION AGENCY

[WH–FRL–6135–8]

Modification of the National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final modification of NPDES general permits; notice of interpretation.

SUMMARY: Today's action clarifies an interpretation of the technology-based effluent limitations applicable to point sources of ''mine drainage'' at active ore mining and dressing operations, which was contained in a recently-issued NPDES general permit for storm water associated with industrial activity. With this notice, EPA provides a more definitive interpretation of the applicability of those recently-issued general permits, specifically, as they apply to certain storm water discharges at active ore mining and dressing operations. To incorporate today's interpretation, EPA modifies the NPDES general permits issued by EPA Regions 1, 6, 9 and 10 because the Agency is the permit issuance authority in States in those Regions. EPA intends, however, that the interpretation apply nationwide in all EPA Regions.

DATES: These permit modifications shall be effective on September 8, 1998.

ADDRESSES: The complete administrative record for today's permit modification is available for public review the Water Docket MC–4101, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: For further information, contact Bryan Rittenhouse, Office of Wastewater Management, Office of Water at (202) 260–0592 or the appropriate EPA Regional Office. For EPA Region 1, covering discharges in the State of Maine and Federal Indian reservations in Maine, in the Commonwealth of Massachusetts and Federal Indian reservations in Massachusetts, in the State of New Hampshire and Federal Indian reservations in New Hampshire, as well as Federal Indian reservations in the States of Vermont, Connecticut, and Rhode Island, and Federal facilities in Vermont, contact Thelma Hamilton at (617) 565–3569. For EPA Region 6, covering discharges in the State of Texas and Federal Indian reservations in Texas, in the State of New Mexico and Federal Indian reservations in New Mexico (except Navajo Reservation lands, which are covered by EPA Region 9 and Ute Reservation lands, which are covered by EPA Region 8 and were not covered by the Multi-Sector General Permit), as well as Federal Indian reservations in Oklahoma and Louisiana, contact Brian Burgess at (214) 665–7534. For EPA Region 9, covering the State of Arizona and Federal Indian reservations in Arizona, and Federal Indian reservations in California (except the Hoopa Valley Tribe) and Nevada, as well as the Duck Valley, Fort McDermitt, Goshute Reservations and Navajo Reservations, each of which cross State boundaries, contact Eugene Bromley at (415) 744–1906. For EPA Region 10, covering the State of Alaska and Federal Indian reservations in Alaska, the State of Idaho and Federal Indian reservations in Idaho (except the Duck Valley Reservation, which is covered by EPA Region 9), Federal Indian reservations in Washington and Oregon (except the Fort McDermitt Reservation, which is covered by EPA Region 9), as well as Federal facilities in Washington, contact Joe Wallace at (206) 553–6645.

SUPPLEMENTARY INFORMATION:

Authority: EPA issues NPDES permits under the authority of CWA section 402, 33 U.S.C. section 1342. Today's modification is based on an interpretation of rules published under the authority of CWA sections 301, 304, 308, 402, and 501(a), 33 U.S.C. sections 1311, 1314, 1318, 1342, and 1361(a). Today's action modifies a table that was initially published in conjunction with NPDES permits for storm water associated with industrial activity issued pursuant to CWA section 402, 33 U.S.C. section 1342.

In today's notice, EPA announces its interpretation of the technology-based effluent limitations applicable to point sources of ''mine drainage'' at ore mining and dressing operations under the Clean Water Act (''CWA''). 33 U.S.C. § 1251 *et seq.* This interpretation updates and replaces an earlier interpretation published in the fact sheet for the final National Pollutant Discharge Elimination System (''NPDES'') Storm Water Multi-Sector General Permit for Industrial Activities at 60 FR 50804 (Sept. 29, 1995)(''Multi-Sector Permit''). The interpretation in today's notice replaces EPA's interpretation in Table G–4 of the Multi-Sector Permit regarding the applicability of the ''mine drainage'' provisions of regulations found at 40 CFR Part 440. 60 FR at 50897. Today's notice also supersedes and clarifies the interpretation that the Agency proposed at 62 FR 54950 (Oct. 22, 1997).

EPA reviewed the administrative record supporting the Part 440 regulations, as well as Agency statements made during the course of litigation over those regulations, and revises Table G–4 accordingly. In litigation challenging the Multi-Sector Permit, *National Mining Association* v. *EPA*, No. 95–3519 (8th Cir.), the National Mining Association (NMA) argued that the regulatory interpretation contained in Table G–4 was overly expansive and not supported by appropriate economic and technological evaluation. To support its argument, NMA cited Agency statements made during the course of litigation approximately twenty years earlier. These statements were not raised and presented to the Agency during the public comment period of the permit. In response to NMA's arguments in the current litigation, EPA has re-evaluated the underlying record supporting the Part 440 regulations and is supplementing its interpretation of the ''mine drainage'' provisions contained in Table G–4. Today's action supersedes the Agency interpretation contained in the Fact Sheet to the Multi-Sector Permit, as originally issued.

Upon review of those documents, the Agency believes the documents (including judicial case law) speak for themselves. Therefore, the Agency is proposing to withdraw portions of the Table that discuss applicability of the Part 440 regulations; i.e., those portions of the Table that do not specify applicability of the Multi-Sector permit. By today's action, EPA also expands the applicability of the Multi-Sector permit consistent with the interpretation in today's notice.

I. Effluent Guidelines for Ore Dressing and Mining Point Source Category

A. Background

Congress enacted the Clean Water Act to establish a comprehensive program to ''restore and maintain the chemical, physical and biological integrity of the Nation's waters' through the reduction, and eventual elimination, of the discharge of pollutants into those waters. CWA § 101(a); 33 U.S.C. § 1251(a). To achieve its objective, the CWA provides for a permit program to control ''point source'' pollution. The CWA point source permitting program is known as the National Pollutant Discharge Elimination System (''NPDES''), under which EPA or authorized States issue permits for point source discharges. Except in accordance with an NPDES permit, a point source discharge of a pollutant is unlawful. CWA § 301(a); 33 U.S.C. § 1311(a). All NPDES permits must, at a minimum, contain technology-based effluent limitations established in effluent guidelines or standards or, if no such

guidelines have been established, limitations derived on the basis of best professional judgment.

Individual NPDES permits contain substantive restrictions, called ''effluent limitations,'' which are aimed at controlling the level of pollutants in point source discharges. CWA § 402(a); 33 U.S.C. § 1342(a). Effluent limitations may be ''technology-based'' or ''water quality-based.''[1] For some industrial point source categories, EPA has published technology-based effluent limitations that apply on a nationwide basis, pursuant to CWA §§ 304(b) and 306(b)(1)(B); 33 U.S.C. §§ 1314(b) and 1316(b)(1)(B).[2] These limitations are called national effluent limitations guidelines or standards. EPA has published best practicable control technology currently available (''BPT''), best conventional pollutant control technology (''BCT''), best available technology economically achievable (''BAT'') effluent guidelines, and new source performance standards (''NSPS'') for point sources in over fifty different industrial categories. Among the effluent guidelines and standards which EPA has established are those applicable to the ore mining and dressing industry. These guidelines are known as the ''Effluent Guidelines for the Ore Mining and Dressing Point Source Category'' (hereinafter referred to as the ''Guidelines''). The Guidelines are published at 40 CFR Part 440.

EPA first published the Guidelines on an interim final basis on November 6, 1975. 40 FR 51722. On July 11, 1978, after substantially expanding the data base supporting the Guidelines, and after considering comments submitted since initial promulgation, EPA republished the Guidelines in modified form. 43 FR 29771 (July 11, 1978). Both the initial and republished Guidelines established BPT effluent limitations for discharges for ore mining and dressing operations.

B. Storm Water Regulation Under the Guidelines[3]

The Guidelines establish industry-wide effluent limitations for two types of mine discharges: (1) mill discharges and (2) mine drainage. ''Mine drainage'' means ''any water drained, pumped, or siphoned from a mine.'' 40 CFR 440.132(h). A ''mine,'' in turn, is defined as:

An active mining area, including all land and property placed under, or above the surface of such land, used in or resulting from the work of extracting metal ore or minerals from their natural deposits by any means or method, including secondary recovery of metal ore from refuse or other storage piles, wastes, or rock dumps and mine tailings derived from the mining, cleaning, or concentration of metal ores. 40 CFR 440.132(g)(emphasis added). An ''active mining area,'' in turn, is defined as: A place where work or other activity related to the extraction, removal, or recovery of metal ore is being conducted, except, with respect to surface mines, any area of land on or in which grading has been completed to return the earth to desired contour and reclamation work has begun. 40 CFR 440.132(a).

1. Petition for Reconsideration

After EPA promulgated the Guidelines on July 11, 1978, a number of mining companies filed petitions for judicial review challenging the Guidelines. [The judicial challenges are discussed below.] During the pendency of its judicial challenge, one of those companies, Kennecott Copper Corporation (''Kennecott'') filed an administrative petition with EPA (dated September 26, 1978) requesting that the Agency reconsider and clarify the Guidelines. Kennecott amended its petition on November 9, 1978. Kennecott identified five areas of alleged deficiencies and concerns with the Guidelines. One of these issues related to the storm water runoff provisions of the Guidelines.

Kennecott objected to the storm water runoff provisions, which it argued were overly vague and capable of being interpreted in a manner that would violate applicable law. Among other things, Kennecott was particularly concerned about applicability of the Guidelines to what it referred to as ''non-process'' areas at mining operations. Kennecott further argued that the Guidelines, if applied in the manner suggested by Kennecott, would entail exorbitant costs not considered during the rule making. Kennecott presented EPA with cost estimates that Kennecott believed it would have to incur to comply with the Guidelines. Kennecott estimated costs to control storm water drainage flows from what Kennecott referred to as the ''process'' and ''non-process'' areas at two Kennecott mining operations, the Ray Mine and the Chino Mine. As discussed more fully below, the Agency's decision on Kennecott's petition is at the core of the NMA litigation over the Multi-Sector Permit.

In partial response to the Kennecott petition, EPA published a notice in the **Federal Register** that clarified the scope of the Guidelines' applicability to storm water runoff. 44 FR 7953–54 (Feb. 8, 1979). That Notice of Clarification explained that the Guidelines applied only to point sources in the active mining area. The Notice clarified EPA's interpretation that the ''mine drainage'' provisions applied to ''water which contacts an active mining area and flows into a point source.'' *Id.* EPA further explained that mining operations are not required to ''collect and contain diffuse storm [water] runoff which would not otherwise be collected in or does not otherwise drain into a point source.'' *Id.* at 7954. In other words, diffuse storm water (from an active mining area) that was collected or contained in, or that naturally flowed into, a point source was subject to the Guidelines. Other storm water drainage flows were not subject to the Guidelines.

EPA denied Kennecott's petition on February 21, 1979. In doing so, EPA relied in part on the Notice of Clarification. The decision on the reconsideration petition discussed the applicability of the Guidelines to Kennecott's Ray Mine. For storm water drainage flows from what Kennecott called ''non-process'' areas at the Ray Mine, EPA concluded that Kennecott would incur no additional costs. Kennecott had, for the purposes of its petition, defined ''non-process'' area to mean ''overburden dumps, material too low in mineral content even to leach, and exposed benches at the mine.'' Citing to the Notice of Clarification, EPA concluded that the definition of ''mine drainage'' did not include diffuse storm water runoff from overburden dumps and material too low in mineral content to leach. As that Notice of Clarification explained, ''[a]ll water which contacts an 'active mining area * * *' and either does not flow, or is not channeled by the operator, to a point source, is considered runoff, and it is not the regulations' intent to require the mine operator to collect and treat such runoff.'' 44 FR at 7954. On the matter of storm water contacting the exposed benches, EPA could not determine whether such discharges would constitute point source discharges and thus, concluded that the issue would best be addressed by the permitting

[1] Water quality based effluent limitations are included in permits when necessary to assure compliance with water quality standards.

[2] If no such guidelines have been established, technology-based limits are developed on a case-by-case basis based on the best professional judgment of the permit writer.

[3] The definitions of and discussion of these terms in this notice are within the use of these terms under the NPDES program and the Clean Water Act. These definitions are not specifically applicable to the use of these terms under other federal environmental laws, including under the Resources Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.* (RCRA) and its implementing regulations.

authority in the context of a permit proceeding.

2. Judicial Challenge

The Guidelines rule was ultimately upheld by the U.S. Court of Appeals for the Tenth Circuit. *Kennecott Copper Corp.* v. *EPA,* 612 F.2d 1232 (10th Cir. 1979). In affirming the Guidelines, the Tenth Circuit relied on the language of the Notice of Clarification and considered moot the Petitioner's challenges to storm water runoff provisions, which were based on the argument that the Guidelines were overly board and included ''nonpoint'' as well as ''point sources.'' *Kennecott Copper Corp.,* 612 F.2d at 1242. The court further found that ''* * * EPA is entirely within its authority in regulating [discharges of] storm runoff that falls within [the definition of] a 'point source.' '' *Id.* at 1243. Additionally, the court reasoned that the determination of whether a particular discharge constitutes a point source is best made in the context of permit proceedings, guided by the broad definition of ''point source'' provided in the CWA.[4] The Court recognized that it is ''unrealistic, if not altogether impossible'' to provide an ''absolute and unequivocal'' definition of ''point source'' and rule of applicability, further supporting case-by-case or site-specific determinations on applicability of the Guidelines.

Congress has purposefully phrased this definition broadly. This is as it should be given its contemplated applicability to literally thousands of pollution sources. To cast such definitions in absolute, unequivocal terms would be unrealistic, if not altogether impossible. As we observed in *American Petroleum Institute,* 540 F.2d at 1032: ''On the road to attainment of the no discharge objective some flexibility is needed.'' 612 F.2d at 1243.

The court did not say anything further in response to Kennecott's arguments complaining that the Guidelines would improperly regulate nonpoint source discharges at mine sites. The court did not rely on or cite to any other references in the administrative record before it. In response to any remaining arguments before it, the court simply noted that ''careful examination of petitioner's remaining arguments has persuaded us that they are without merit.'' *Id.* at 1243. Thus, the court either summarily rejected Kennecott's arguments that the Guidelines were vague and overly board, or affirmatively upheld the regulations against Kennecott's challenges based on reasons explained in the decision.[5]

While, over the course of the intervening years, the federal courts have refined their interpretations of ''point source,'' EPA's conclusions about point sources at mining operations has remained constant. In upholding the Guidelines in *Kennecott Copper Corp.,* the Tenth Circuit specifically cited to one of the seminal cases upon which courts rely for the proposition that the term ''point source'' should be interpreted broadly, *United States* v. *Earth Sciences, Inc.,* 599 F.2d 368 (10th Cir. 1979). 612 F.2d at 1241, 1243.

3. Subsequent Agency Action

Apart from the Agency statements made during the course of the *Kennecott Copper Corp.* litigation, EPA staff has not been able to locate evidence of subsequent Agency action referring to those statements. Since that time, EPA and authorized NPDES States have issued permits to a significant number of ore mining and dressing operations. Until the instant litigation, no party identified or presented any of the Agency litigation statements from the *Kennecott Copper Corp.* case to Agency personnel working with NPDES permits.

A subsequent judicial case, which EPA cited in the 1990 storm water regulations, further clarifies that storm water associated with industrial activity at mining sites may result in point source discharges. *See Sierra Club* v. *Abston Construction Co., Inc.,* 620 F.2d 41 (5th Cir. 1980); 55 FR at 47997. In that case, the court determined that whether a point source discharge was present due to rainfall causing sediment basin overflow and erosion of piles of discarded material, even without direct action by coal miners, was a question of fact. 620 F.2d at 45. The ultimate question was whether the discharge is from a ''discernible, confined, discrete conveyance,'' whether by gravitational or non-gravitational means. *Id.* It was irrelevant that operators did not construct the conveyances, so long as those conveyances were reasonably likely to be the means by which pollutants were ultimately deposited into a navigable body of water. *Id.* Conveyances of pollution formed either as a result of natural erosion or by material means may fit the statutory definition of point source. *Id.*

II. NPDES Storm Water General Multi-Sector Permit for Industrial Activities

A. Background

In 1987, Congress amended the CWA by adding, among other things, several provisions concerning the control of point source discharges composed entirely of storm water. In the 1987 amendments, Congress directed EPA to publish permit application regulations for ''discharges of storm water associated with industrial activity.'' CWA § 402(p)(4)(A), 33 U.S.C. § 1342(p)(4)(A). On November 16, 1990, EPA published those regulations. In doing so, EPA defined ''storm water'' as storm water runoff, snow melt runoff, and surface runoff and drainage. It also defined ''[s]torm water discharge associated with industrial activity'' to mean the discharge of pollutants from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. See 40 CFR 122.26(b)(14). Included among these discharges were discharges from conveyances at mining facilities, including from active and inactive mining operations that discharge storm water contaminated by contact with or that has come into contact with overburden. 40 CFR 122.26(b)(14)(iii). In the course of that rule making, in order to reconcile those application regulations with a statutory exemption from CWA section 402(l)(2), EPA noted that ''a permit application will be required when discharges of storm water runoff from mining operations come into contact with any overburden. * * *'' 55 FR 47990, 48032. Today's interpretation and permit modification implements those provisions.

Upon challenge, this part of the regulations was upheld by the U.S. Court of Appeals for the Ninth Circuit. *American Mining Congress* v. *EPA,* 965 F.2d 759 (9th Cir. 1992) (regulations upheld against industry challenge that the rules, among other things, imposed retroactive liability for storm water discharges from existing mine sites). The issues in that case are related to, but different from, the issues addressed in today's action. That case involved inactive mines; today's action involves active mining operations.

[4] ''Point source'' is defined at Clean Water Act § 502(14) to mean ''any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. *See also* 40 CFR 122.2.

[5] In litigation over the Multi-Sector Permit, NMA now suggests that the 10th Circuit relied on the Agency statements concerning the status of storm water drainage flows at the Ray Mine to uphold the Guidelines and that the Agency cannot now conclude that the court independently found the storm water runoff provisions of the Guidelines acceptable. EPA disagrees. The court's decision never cites or discusses any of these statements.

The NPDES regulations for storm water describe three mechanisms by which dischargers of storm water associated with industrial activity could apply for permits. 40 CFR 122.26(c)(1). First, dischargers can apply for ''individual permits.'' Second, (prior to 1992) dischargers could apply for permits through a ''group application.'' Third, dischargers can apply for coverage under an ''EPA promulgated storm water general permit.'' Dischargers from numerous industries applied for permits through the group application process. Among them were dischargers from the ore mining and dressing industry.

On March 10, 1993, EPA accepted group applications from ore mining and dressing industry applicants and began processing those group applications. On November 19, 1993, EPA proposed to issue a single ''general'' permit (for each State where EPA issues permits) based on all of the group applications accepted and received from group applicants in various covered industries. 58 FR 61146, 61236–61251 (November 19, 1993). EPA issued that set of general permits on September 29, 1995, and took subsequent action concerning these general permits on February 9, 1996, February 20, 1996 and September 24, 1996. These general permits are entitled the NPDES Storm Water Multi-Sector General Permits for Industrial Activities (hereinafter referred to in the singular as the ''Multi-Sector Permit''). The Multi-Sector Permit applies in most States, Territories, and Indian Country where EPA administers the NPDES permitting program.

The Multi-Sector Permit contains requirements that are specifically tailored to the types of industrial activity occurring at facilities represented by various industry groups applicants. Unlike much of the Ore Mining and Dressing Guidelines, the Multi-Sector Permit incorporates narrative effluent limitations for storm water discharges. These narrative effluent limitations are referred to as ''best management practices'' (''BMPs''). BMPs are designed to represent the pollution reductions achievable through application of BAT and BCT. Permits include BMPs to control or abate the discharge of pollutants when, for example, numeric effluent limitations are infeasible. 40 CFR 122.44(k).

In addition to the narrative BMPs, the Multi-Sector Permit includes eligibility restrictions. Multi-Sector Permit Part I.B.3.(a)–(h), 60 FR at 51112. Discharges that do not comply with the eligibility restrictions are not authorized by the permit. For example, storm water discharges that the Agency has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard are not authorized by the Multi-Sector Permit. Multi-Sector Permit Part I.B.3.f.

B. Multi-Sector Permit Coverage of Mining Activity

By its terms, the Multi-Sector Permit provides authorization for some storm water discharges from ore (metal) mining and dressing facilities. Authorization initially was limited, however, to storm water discharges from or off of: topsoil piles; offsite haul/access roads outside the active mining area; onsite haul roads if not constructed of waste rock or spent ore (except if mine drainage is used for dust control); runoff from tailings dams/dikes when not constructed of waste rock/tailings and no process fluids are present; concentration buildings, if no contact with material piles; mill sites, if no contact with material piles; chemical storage areas; docking facilities, if no excessive contact with waste product; explosive storage areas; reclaimed areas released from reclamation bonds prior to December 17, 1990; and partially/inadequately reclaimed areas or areas not released from reclamation bonds.

The Multi-Sector Permit covers discharges composed of entirely storm water flows, as well as certain allowable non-storm water discharges. 60 FR at 51114; Part III.A. The Multi-Sector Permit does not authorize point source dry weather discharges, such as from mine adits, tunnels, or contaminated springs or seeps, which are not storm water. *Id.*; Part III.A.2.a.; 60 FR at 51155. Note that such dry weather discharges are not affected by today's clarification.

Under the Multi-Sector Permit at Part I.B.3.g., permit coverage is available for storm water discharges covered by some, but not all, of the various effluent guidelines that address storm water, including, for example, some of the storm water discharges under the Mineral Mining and Processing Guidelines at 40 CFR Part 436. 60 FR at 51112. The Multi-Sector Permit does not, however, cover storm water discharges from point sources that are subject to the Ore Mining and Dressing Guidelines. 60 FR at 51155; Part XI.G.1.a.

Table G–4 of the Multi-Sector Permit, entitled ''Applicability of 40 CFR Part 440 Effluent Limitations Guidelines to Storm Water,'' identified various discharge sources associated with ore mining and dressing operations. The Table indicated EPA's view at that time concerning standards of regulatory control for those discharges. The different standards of regulatory control include: ''mine drainage'' effluent limitations guidelines, found in the Guidelines; ''mill discharge process water'' effluent limitations guidelines, also found in the Guidelines; ''storm water,'' which could, for example, be found in the Multi-Sector Permit; and ''unclassified,'' indicating discharges not regulated under the Guidelines or the Multi-Sector Permit.

As EPA said in adopting the Multi-Sector Permit: ''Table G–4 clarifies the applicability of the Effluent Limitations Guidelines found in 40 CFR Part 440. *This Table does not expand or redefine these Effluent Limitations Guidelines.*'' 60 FR at 50897 (emphasis added). EPA's intent in publishing Table G–4, therefore, was merely to reiterate the interpretation that EPA issued when it promulgated the Guidelines.

III. Legal Challenge Concerning Table G–4

On October 10, 1995, the National Mining Association (hereinafter referred to as ''NMA'' or the ''Petitioners'') petitioned the U.S. Court of Appeals for the Eighth Circuit for judicial review of the Multi-Sector Permit. Specifically, Petitioners challenged EPA's determination that storm water runoff from a number of ancillary mine sources identified in Table G–4 of the Multi-Sector Permit would constitute sources of ''mine drainage'' under the Guidelines. The particular mining activities of concern include overburden piles, haul roads made of overburden and other ancillary mine areas. As noted above, EPA excluded storm water runoff from these sources from coverage under the Multi-Sector Permit. The Petitioners contended that this determination reflects a new, more expansive interpretation of the Guidelines.

NMA presented documents from the prior *Kennecott* litigation, namely: EPA's 1979 decision responding to Kennecott's petition for reconsideration of the Guidelines; a letter of EPA counsel which was attached to a decision responding to the Kennecott petition for reconsideration of the Guidelines; and a brief that EPA filed before the Tenth Circuit. NMA cited these documents to support its argument that EPA's interpretation prior to publishing the Multi-Sector Permit was that ''overburden'' (''waste rock/overburden piles'') and ancillary areas at mining operations would be outside the scope of the Guidelines. NMA asserted that certain entries in Table G–4 were incorrect to the extent that the table categorically identified discharges from such sources as covered by the Guidelines. NMA argued that, based on

EPA statements made during the course of the *Kennecott* litigation, *no* overburden-related areas are covered by the Guidelines.

EPA has reviewed the Agency statements made during the 1979 litigation challenging the Guidelines rule making. While disagreeing with NMA's categorical conclusion that no overburden-related areas are covered by the Guidelines, EPA believes the earlier Agency statements reflect an EPA interpretation that a storm water discharge from a waste rock or overburden piles would not be subject to the Guidelines unless: (1) it naturally drains (or is intentionally diverted) to a point source; and (2) combines with ''mine drainage'' that is otherwise regulated under the Part 440 regulations. Such a discharge would be subject to the Part 440 regulations if, however, it combined with either process waters (i.e., mill drainage) or other mine drainage. This clarification was not obvious from the face of Table G–4 as presented in the Multi-Sector Permit.

NMA's challenge to the Multi-Sector Permit is currently under the advisement of the Eighth Circuit. Both parties have submitted briefs. A coalition of citizens' interest groups, the Western Mining Action Project and Sierra Club Legal Defense Fund, also filed an *amicus curiae* brief with the Court. On March 10, 1997, the Eighth Circuit heard oral argument in *National Mining Association* v. *EPA*, No. 95–3519. At that time, counsel for EPA represented to the court that EPA intended to prepare a clarification of the Agency's interpretation of the technology-based effluent limitations applicable to point source discharges from various areas at ore mining and dressing operations. Today's notice provides that clarification and would revise the Table so that it reflects only sources to which the Permit would apply.

IV. Interpretation

Upon fuller review of the underlying record, EPA now believes that, in 1978–79, the Agency did not consider certain point source discharges of storm water associated with ''waste rock and overburden'' to be subject to the Ore Mining and Dressing Guidelines. Specifically, EPA did not conduct a complete economic and technological assessment of diverting drainage flows from ''waste rock or overburden'' outside the active mining area into the active mining area. Therefore, the Agency did not consider such discharges to be sources of mine drainage. First, discharges from waste rock and/or overburden piles would be outside the scope of the Guidelines if they consist ''entirely of diffuse runoff which contacts overburden piles, which did not either normally flow to, or by design drain to a point source.'' Such diffuse runoff would not even be subject to the NPDES permit program if it was not added to waters of the United States through a discrete, confined, discernable conveyance. *See* 44 FR 7953 (Feb. 8, 1979). Second, such discharges would be outside the scope of the Guidelines if storm water runoff from waste rock and/or overburden-related sources does not combine with mine drainage otherwise subject to the Part 440 regulations. In light of the above, EPA believes that, to the extent that a reader could misinterpret the Table as categorically including all ''waste rock/overburden'' sources to be within the ''active mining area,'' Table G–4 did not accurately reflect the scope of the applicability of the Guidelines.

Today's action does not change in any way EPA's interpretation of the coverage of the Guidelines set forth in the 1979 Notice of Clarification, which provides that the Guidelines ''are not intended to require the operator to collect and contain diffuse storm water runoff which would not otherwise be collected in or does not otherwise drain into a point source.'' Today's notice articulates the 1979 interpretation to the fact situation contained in Table G–4 of the Multi-Sector Permit.

Discharges from overburden-related sources that do not combine with ''mine drainage'' otherwise subject to the Part 440 regulations are not covered by the Guidelines. Like all ''point source'' discharges, however, these discharges require NPDES permit authorization to be in compliance with the CWA. If these discharges are entirely composed of storm water (and are not covered by the Guidelines), then they may be authorized under an EPA general permit for storm water (if it otherwise meets the eligibility provisions), or an individual permit with BPJ-based controls, which may include either numeric limitations and/or narrative limitations (in the form of BMPs).

Discharges from haul roads constructed of waste rock or spent ore are subject to the Guidelines only if the discharge combines with ''mine drainage'' otherwise subject to the Part 440 regulations and the resulting storm water flows drain into a point source. Point source discharges consisting entirely of storm water from haul road-related sources would be addressed in the same manner as ''waste rock and overburden'' (see above). As noted above, such discharges would be outside the scope of the NPDES program if they consist entirely of diffuse runoff which does not flow to a point source.

EPA notes that NPDES permit coverage is still required when runoff from waste rock and overburden piles is channeled or drains to a point source. Under today's clarification, determinations about whether numeric effluent limitations similar to those in the Ore Mining and Dressing Guidelines should apply to discharges from overburden piles and haul roads are ones to be made on a site-by-site basis based on the ''best professional judgment'' of the permit writer (according to regulations at 40 CFR 125.3(d)). Such permits might include effluent limitations similar to the effluent limitations for ''mine drainage'' under the Guidelines. If determined feasible, EPA acknowledges that compliance with such limits may necessitate diversion of flows from such sources for treatment purposes. EPA provides additional guidance below.

V. Guidance To Permit Applicants and Permit Writers

Based on the foregoing discussion, EPA is revising Table G–4 today. In its earlier form, Table G–4 could have been misinterpreted. Consistent with earlier EPA statements made in the preamble to the Guidelines, the Notice of Clarification and other documents discussed above, the Table G–4 references to discharges from ''waste rock/overburden'' and ''onsite haul roads constructed of waste rock or spent ore'' at active ore mining and dressing sites are hereby modified. The Agency does not consider those discharges to be subject to the Guidelines unless they combine with ''mine drainage'' otherwise subject to the Part 440 regulations and the resulting storm water flows drain into a point source. Although not compelled by the Guidelines, numeric effluent limitations may be appropriate for these discharges if the permit writer so determines on a BPJ basis or if the discharge would cause or contribute to a violation of water quality standards.

The term ''active mining area'' should be interpreted in accordance with the plain language of the regulations; however, application of the definition may vary from mine to mine. As the Tenth Circuit recognized in the *Kennecott Corp.* case, ''to cast such definitions in absolute, unequivocal terms would be unrealistic, if not altogether impossible.'' 612 F.2d at 1243. The regulations define ''active mining area'' as ''a place where work or other activity related to the extraction, removal, or recovery of metal ore is

being conducted, except, with respect to surface mines, any area of land on or in which grading has been completed to return the earth to desired contour and reclamation work has begun.'' 40 CFR 440.132(a).

Today's interpretation and guidance describe a distinct class of discharges that was not apparent from the face of Table G–4 when the Agency published the Multi-Sector Permit. Specifically, today's interpretation identifies some discharges that could have been interpreted to be ''mine drainage'' under the plain language of the Guidelines and, therefore, within the applicability of the Guidelines and ineligible for coverage under the ore mining and dressing portion of the Multi-Sector General Permit (and under Table G–4) even though the Agency did not evaluate the technological feasibility and cost impacts of diverting drainage from those sources into the active mining area when it developed the Ore Mining and Dressing Guidelines. Based on today's clarification, such an interpretation would be inaccurate because EPA did not require diversion of flows from outside the active mining area into the active mining area for treatment. For this class of discharges described by today's notice, i.e., those from overburden and/or waste rock sources that do not combine with mine drainage otherwise subject to the Part 440 regulations, authorization under a EPA general permit for storm water may be available subject to the eligibility restriction against storm water discharges that the Agency has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard.

Note that the permit applicant bears the initial responsibility to determine whether its discharges are eligible for coverage under an EPA-issued general permit. Discharges of ''mine drainage'' from the ''active mining area'' are not eligible for authorization under either the NPDES Baseline General permit or the Multi-Sector Permit because such discharges are subject to the Guidelines. For this reason, EPA encourages permit applicants to contact the NPDES permit issuance authority if there is any doubt regarding the nature and scope of the ''active mining area'' at the site of their operations. In many cases, modifications to individual permits may be more appropriate for longer-term authorization of the storm discharges in question. Of course, as indicated in the Table, there may be other such point sources of drainage from within the active mining area that would not be ''mine drainage.'' Such discharges may be appropriately regulated under EPA general permits for storm water.

EPA also recommends that permit applicants contact the relevant NPDES authority for assistance in determining the appropriate permitting vehicle to address the class of discharges described in today's notice. At the time of reissuance, individual permits provide the best opportunity to evaluate all discharges at a mining operation, determine appropriate technology-based and water quality-based limitations, and tailor controls appropriate for the discharge, for example, through the use of best professional judgment (BPJ) according to 40 CFR § 125.3(d) or analogous State law, and where necessary to assure compliance with water quality standards.

NPDES permitting authorities should consider the following pollutants of concern when determining appropriate permit limitations:

—*pH, Acidity, and Alkalinity.* The term pH is a measure of relative acidity or alkalinity of water. Acidity is produced by substances that yield hydrogen ions upon hydrolysis and alkalinity is produced by substances that yield hydroxyl ions. The concentration of hydrogen ions is termed ''pH.'' At a pH of 7, the water is neutral; lower pH values indicate acidity and higher values indicate alkalinity. Mine waste water is generally acidic as a result of the oxidation of minerals. Extremes in pH or rapid pH changes can exert stress conditions on aquatic biota, even to the point of killing aquatic life. The relative toxicity to aquatic life of other pollutants often is related to pH. For example, metalocyanide complexes can increase a thousand-fold in toxicity with a decline of 1.5 pH units. pH also affects the availability of nutrients utilized by aquatic life.

—*Total Suspended Solids* (''TSS''). Suspended solids adversely affect fisheries by covering the bottoms of streams and lakes, destroying the bottom dwelling fish and spawning grounds. Solids in suspension increase water turbidity, reduce light penetration and impair photo synthetic activity. When solids settle to the bottom, they are often more damaging to aquatic life. TSS composed of organic matter may deplete available oxygen supplies necessary for maintaining aquatic ecosystems. High TSS concentrations are prevalent in discharges from mining operations as a result of the mining process itself.

—*Copper.* In relatively low doses, copper can cause systems of gastroenteritis in humans, with nausea and intestinal irritations. Copper concentrations of less than one milligram per liter can be toxic to many kinds of fish and aquatic biota.

—*Zinc.* Concentrations of zinc ranging from 0.01 to 0.1 milligrams per liter are lethal to fish. Zinc may be rendered more toxic in the presence of copper.

If the NPDES permitting authority has data, for example, which indicate that discharges outside the active mining area only present pollution concerns associated with solids (e.g., settleable solids or total suspended solids), the permit requirements for those discharges may be limited to controlling those solids. However, if discharges contain heavy metals, the permitting authority, using BPJ, may establish appropriate technology-based metals effluent limitations. Further, if the permitting authority has data to indicate a reasonable potential to cause or contribute to an excursion of water quality standards for other pollutants, including pH and/or heavy metals, then the permit must include those more stringent requirements to assure compliance with water quality standards. EPA recommends ongoing monitoring for both pH and metals because the complex geochemistry at many mine sites presents difficulty in predicting the quality of storm water into the future.

In making BPJ determinations to require, for example, diversion of contaminated storm water flows for treatment, permitting authorities need to consider: the age of the equipment and facilities involved; process employed; the engineering aspects of the application of various types of control techniques; process changes; the costs of achieving effluent reduction; and non-water quality environmental impacts (including energy requirements). Such considerations should be documented in permit fact sheets.

In cases where there is a dry weather discharge outside the scope of the Guidelines, EPA strongly recommends that the permitting authority issue an individual NPDES permit using BPJ to establish appropriate technology-based limits or more stringent limitations necessary to assure compliance with water quality standards. The permitting authority should consider the degree of pollutant discharges (especially, whether the discharge contains heavy metal pollutants) and must consider the impact on the receiving water when establishing appropriate water quality-based controls on the discharge.

Finally, the Agency cautions that today's interpretation should not be

read as a license for mine operators to convert point source discharges into ''nonpoint'' sources in order to avoid regulation under the NPDES permit program. If a mining operation has a discernable, confined, discrete conveyance, any attempt to avoid regulation by intentional ''diffusion'' of that waste water stream, for example by spraying it over a hill side or inserting diffusing devices at the ends of drainage culverts, would still constitute a point source discharge if the waste water ultimately enters waters of the United States (as opposed to appropriate land application of such waste waters). While such diffusion may beneficially reduce the potential for erosion and instream sedimentation, it would not eliminate the need for treatment where necessary, for example, where the discharge contains metals contributing to a violation of State water quality standards.

VI. Monitoring Requirements for Waste Rock and/or Overburden Sources Eligible for Authorization Under Today's Modification

Subject to the eligibility limitations in the Multi-Sector Permit, storm water discharges from waste rock and overburden sources are eligible for general permit authorization according to the terms and conditions of the permit. For the most part, permittees will control such discharges in the same manner as other storm water discharges associated with the operation that were already eligible for permit coverage. In response to comments that extending Multi-Sector Permit coverage to this category of discharges is inappropriate, however, today's permit modifications impose requirements for analytic monitoring of storm water discharges from these waste rock and/or overburden sources.

By authorizing storm water discharges from waste rock and/or overburden sources, today's modifications to the Multi-Sector Permit will assure identification of and pollutant reduction at waste rock and/or overburden sources that might otherwise have remained unregulated until EPA (or State) regulatory personnel conduct individual, mine-by-mine, source-by-source evaluations. Under the monitoring requirements in today's modification, permittees (at all types of mines) will sample and measure at least once for a variety of mining-related pollutants. In addition, depending on the type of ore mined, permittees will also sample and measure twice annually for a list of pollutants specified for specific types of ore mining categories.

The Multi-Sector Permit, as modified, expires in September 2000. Thus, the authorization provided by today's permit modification will be of limited duration. Given the limitations in the data set from which EPA derived the requirements in the Multi-Sector Permit, the Agency believes that monitoring over time (until September 2000) is necessary, both to appropriately control storm water discharges from waste rock and overburden until September 2000, and to determine the appropriate control measures upon reissuance of the Multi-Sector Permit. As such, the monitoring is both ''regulatory,'' in that it will identify sources of particular concern, as well as ''evaluative,'' in that it will provide data to describe and evaluate storm water discharges from waste rock and overburden sources in a comprehensive fashion.

For storm water discharges from waste rock and overburden piles, permittees will sample and analyze at least once for the following metals: antimony, arsenic, beryllium, cadmium, copper, iron, lead, manganese, mercury, nickel, selenium, silver, zinc. Each of these metals can be measured using the same analytic test procedure. The original Multi-Sector Permit also included ''parameter benchmark values'' for each of these metals. See 60 FR at 50826 (Table 5). Consistent with the identification of pollutants in the benchmark values table, permittees will measure for total ''recoverable'' metals. Though the Agency has expressed a policy preference for measurement of total dissolved metals in describing ambient water quality, the monitoring for total metals to characterize effluent discharges under today's modification is consistent with NPDES regulations, which specify that, when a permit contains a *limitation* for a metal, the limit be expressed in terms of total recoverable metals. See 40 CFR 122.45(c). At the discretion of the permittee, however, the permittee may also report information about ''dissolved'' metal analysis for the measured samples because EPA will evaluate all available monitoring information to determine appropriate terms and conditions for the Multi-Sector Permit upon reissuance. Permittees will also sample and analyze for pH, hardness, total settleable solids (TSS) and turbidity in the storm water discharges from such piles.

For any pollutant occurring above a benchmark value, the permittee will sample and analyze twice annually. In the case of pH monitoring, two annual samples is required if the measured pH falls outside the range listed in Table 5. Hardness does not have a benchmark value; twice annual measurement of hardness would accompany measurement for any hardness dependent metals (cadmium, copper, lead, nickel, silver, and zinc) required to be measured twice annually based on this initial measurement.

The permit includes this monitoring ''screen'' based on the geologic variability of waste rock and overburden associated with various ore types. Though a particular site may be mined only for a particular ore type, other metals may exist in the overburden (though not high enough in content to be of economic value). This initial monitoring will identify any such metals of concern. Measurement of such metals above the identified ''benchmark'' necessitates continuing attention through twice annual monitoring. Measurement of pH will also identify mine piles of concern for acidity. Information about hardness is important in determining bioavailability of measured metals, which in turn is useful to predict water quality impact. Measurement of total settleable solids and turbidity provides an indication of the effectiveness of measures to control erosion and runoff of storm water, which may impair aquatic life and aquatic habitat at high levels.

As noted above, permittees are also automatically required to conduct twice annual monitoring for specified pollutants associated with the specific type of ore mined at the facility. For certain types of ore mines, the effluent limitations guidelines (the Part 440 regulations) identified specific ''pollutants of concern.'' Given the potential for changes in geochemistry of waste rock and overburden piles over time, this categorical monitoring (twice yearly) is required regardless of the test results from the initial monitoring screen. Note that two types of ore mining operations, iron mining and uranium/radium/vanadium mining, are required to measure for dissolved iron and dissolved radium, respectively.

The permit requires two monitoring events per year (once between January and June, and once between July and December) in order to assure that collected samples reliably ''represent'' expected discharges over the course of the year and to account for the significant potential difficulty (and potential for resulting error) in sampling. Given the opportunity for a sampling waiver under certain temporally-dependent conditions, the twice annual monitoring requirement will provide a meaningful representation of discharges, including seasonal variability.

The analytic monitoring requirements only apply to storm water discharges from piles of waste rock and overburden piles, not to haul roads and access roads constructed from waste rock or overburden. While the Agency is aware of the potential for water quality problems associated with acid rock drainage from piles of waste rock and/or overburden, the Agency is not aware of the same threat from drainage from access roads and haul roads. Given the relative flow per discharge source compared to piles, visual discharge monitoring and inspection should be adequate for haul roads and access roads.

Monitoring is required only at representative outfalls. Consistent with the existing Multi-Sector Permit, permittees are only required to sample and analyze discharges from the representative outfalls, which in turn, are to be identified in pollution prevention plans (i.e., in the topographic maps identifying drainage patterns). The pollution prevention plan also must explain why the discharges are expected to be substantially identical, estimate the drainage area and runoff coefficient. See generally, the explanation in the Multi-Sector Permit at 60 FR at 51160, col. 3 (''Representative Discharge'').

Similar to the reporting requirements in the Multi-Sector Permit, permittees need to submit monitoring results in Discharge Monitoring Reports on an annual basis. Because the Multi-Sector Permit will expire in September 2000, this requirement will result in essentially two reports for each mining operation. The first report will provide important information upon which the Agency can begin the process to reissue the Multi-Sector Permit; the second report will confirm (or refute) preliminary decisions with sufficient time for the Agency to evaluate the information prior to proposing reissuance.

The permit modification (and monitoring requirements) apply to both ''active'' piles, as well as ''inactive'' piles, though only at ''active'' mining and dressing operations. Permittees have discretion to sample discharges at any convenient point prior to discharge to waters of the United States, including a sampling point after application of the best management practice. Consistent with the analytic monitoring requirements for discharges from active copper mines (in the existing Multi-Sector Permit), permittees may collect substitute samples when adverse weather conditions create dangerous conditions for personnel or otherwise make the collection of a sample impracticable.

VII. Summary of Responses to Public Comments

EPA has prepared a comprehensive response to public comments received on the proposal and that document is available in the administrative record for today's action. Some of those comments and responses are included below.

Comment. EPA's 1978 and 1982 Development Documents reveal that EPA has never analyzed the technical and economic feasibility of subjecting storm water runoff from vast overburden piles, haul roads and similar ancillary areas to the strict Part 440 effluent limitations. EPA wrongly still presumes that the ''active mining area'' should be interpreted broadly. The purported definition of the term ''mine'' [from the 1975 preamble and 1978 Development Document] is inconsistent with (and far broader than) the subsequently-promulgated regulatory definition of the term ''mine'' for the purposes of 40 CFR § 440.132. That definition does not include such things as ''haul roads'' or ''all lands affected by the construction of new roads or the improvements or use of existing roads to gain access to the site,'' nor does it include ''overburden piles'' or ''storage areas'' (except to the extent that such piles or areas are currently being used for the ''secondary recovery of metal ore''). Thus, the proposed modification is inconsistent on its face with the existing regulation and should be eliminated. All references to the scope of the term ''mine'' (or the ''active mining area'') should be limited to the regulatory definitions which speak for themselves.

Response. The commenter presents forceful arguments supporting revision of the interpretation of ''the'' definition as proposed, but some of its assumptions understate and confuse the nature of the Agency's actions in developing and promulgating the Part 440 regulations. By today's action, EPA explains its interpretation.

The definition of ''mine'' at 40 CFR 440.132(g) includes ''an active mining area, including all land and property placed under, or above the surface of such land, used in or resulting from the work of extracting metal ore or minerals from their natural deposits by any means or method, including secondary recovery of metal ore from refuse or other storage piles, wastes, or rock dumps and mill tailings derived from the mining, cleaning, or concentration of metal ores.'' An ''active mining area'' is ''a place where work or other activity related to the extraction of, removal, or recovery of metal ore is being conducted, except, with respect to surface mines, any area of land on or in which grading has been completed to return the earth to desired contour and reclamation work has begun.'' 40 CFR 440.132(a)(emphasis added). The plain meaning of the words ''other activity related to * * *'' could be interpreted to include overburden-related sources (in that disposal of mining waste is ''related to'' and, in fact integral to, mining) and haul roads (in that access to and from mining sites is ''related to'' and, in fact, integral to mining). Under today's interpretation, however, overburden-related sources would not be categorically subject to the Part 440 regulations unless otherwise sited in the active mining area. Likewise, waste rock and overburden-related sources are not categorically excluded from applicability of the Part 440 regulations because some such sources may be sited in the active mining area and combine with mine drainage otherwise regulated under the Part 440 regulations.

The definitions of the term ''mine'' from the 1975 preamble and 1978 Development Document differ from the definition of the term ''mine'' published at 40 CFR § 440.132. Descriptions in the 1975 preamble and 1978 Development Document were developed and used by Agency personnel gathering information at existing mining operations. EPA presumes that *some* of the sources identified in the 1975 preamble and 1978 Development Document did drain to existing treatment systems at some facilities. EPA acknowledges, however, that the location of such sources does not necessarily and categorically define the geographic scope of active mining area. EPA notes that the definition of ''mine'' in the 1982 Development Document more closely paraphrases the regulatory definitions.

To respond to this comment and avoid further confusion, however, EPA has removed references to the 1975 and 1978 developmental definitions in the interpretation published today. By today's action, a discharge associated with the disposal of waste rock or overburden source would not be subject to regulation under the Part 440 regulations unless it: (1) naturally drains (or is intentionally diverted) to a point source; and (2) combines with ''mine drainage'' that is otherwise regulated under the Part 440 regulations. As such, EPA has modified the provisions of the Multi-Sector permit to include monitoring provisions that should effectively identify any waste rock and overburden sources of environmental concern.

Comment. The newly proposed version of Table G–4 omits certain sources of storm water discharges that were listed in the prior version and as to which the multi-sector general permit should be applicable, specifically, crusher areas, ore piles, and spent ore piles. The commenter believes these areas are outside the active mining area.

Response. The published interpretation no longer attempts to enumerate various areas at mining operations for the purposes of indicating those for which the Part 440 regulations apply. By deciding not to list those areas, EPA specifically does not expand permit coverage to include those areas. In the group applications from the mining industry, group applicants did not specifically seek permit authorization for such areas. EPA therefore lacks sufficient information to address these areas today.

Comment. Mines are subject to state and federal regulations pertaining to dust. Nevada encourages the use of pumped groundwater for dust control in order to conserve water. To subject haul roads to numeric effluent limitations because they use pumped groundwater to limit dust in order to comply with other regulations seems counterproductive and shortsighted. Any statement that would subject these roads to such limitations should be deleted. In Nevada, groundwater is typically pumped from an underground aquifer to a holding tank for dust control usage. Groundwater used for dust control is not normally applied to roads during storm events, thus, there would be no commingling of storm water and ground water.

Response. EPA did not intend to identify all waters used for dust control as sources of mine drainage. EPA recognizes that groundwater is used for dust control in some areas of the country. EPA does not necessarily consider groundwater to be mine drainage, especially uncontaminated groundwater. When mine water, which might otherwise constitute mine drainage, is used for dust control, however, then such dust control waters would remain mine drainage.

Comment. The proposed modification should not be limited to EPA Regions 1, 6, 9, and 10. EPA Region 8 has relied on Table G–4 from the original Multi-Sector Permit to dictate to States with EPA-approved NPDES permit programs how 40 CFR Part 440 must be interpreted. EPA has provided the 1995 Multi-Sector Permit to authorized States as a model. Because authorized States must have requirements that are at least as stringent as the federal program, EPA should confirm that any revised interpretation of 40 CFR Part 440 is applicable to all States with ore mining and dressing facilities. EPA's interpretation in Table G–4 is applicable to all States, not just EPA, including for the purposes of withdrawal of authorized State NPDES programs. EPA has not provided a reasoned and viable basis for regional distinctions in applicability of the interpretation in the proposed modification.

Response. EPA agrees that the Agency's interpretation of the Part 440 regulations should apply on a national basis. States authorized to administer the NPDES permitting program are to include effluent limitations in permits that are at least as stringent as the limitations that EPA would include in NPDES permits. Because the interpretation in today's action is just that—an interpretation—and because the primary action EPA takes in today's action is to modify EPA-issued NPDES general permits for storm water associated with industrial activity (the Multi-Sector Permit), only the EPA Regional Administrators who issue the Multi-Sector Permit sign today's notice. EPA does intend, however, that the interpretation associated with the modification to the Multi-Sector Permit apply on a nationwide basis.

Comment. EPA should address the situation where an overburden pile is physically separated from and does not naturally drain to an open pit.

Response. EPA generally acknowledges that some mining operations and some States authorized to administer the NPDES program have not historically interpreted the term ''active mining area'' in the same manner as the Agency would have interpreted that term reflected in the 1995 version of Table G–4. Upon fuller review of the underlying administrative record to the original Part 440 rule makings, EPA concludes that the Agency did not conduct a complete economic and technological assessment of diversion of drainage flows from ''waste rock or overburden'' outside the active mining area into the active mining area. As such, the Agency agrees that a waste rock or an overburden pile that is physically separated from and does not naturally drain (or has not been intentionally diverted) to treatment would not be a source of mine drainage. In such a case, however, evaluation of the resulting discharges would be necessary and appropriate to determine whether such discharge would cause, have a reasonable potential to cause, or contribute to a violation of any water quality standard.

Comment. EPA should clarify that water quality treatment of ''mine drainage'' necessitated by active mining (e.g., construction of a waste rock pile) is part of the ''active mining area'' and the ''mine'' and that such drainage is subject to the effluent limitations guidelines for the life of the discharge.

Response. EPA generally agrees that mining operation point sources from active mining that represent water quality concerns remain subject to CWA control requirements for as long as the discharge causes or contributes (or has a reasonable potential to contribute) to a violation of a water quality standard. EPA presumes that treatment to protect water quality may be necessary, for example, for discharges from a waste rock pile with mineral content high enough to leach metals under normal environmental conditions. EPA does not, however, conclude that all regulation of point sources to protect water quality necessarily means that such point sources are subject to regulation under the national effluent limitations guidelines. Any more stringent water quality based effluent limitations are necessary when technology-based limitations are insufficient to assure compliance with water quality standards. The imposition of a water quality based effluent limitation does not necessarily expand the applicability of technology-based limitations. Such water quality-based limitations may regulate different or fewer (or more) pollutants than applicable technology-based limitations.

Comment. EPA should interpret the Neuman letter to exempt only releases from ''areas * * * where work or other activity related to the extraction, removal or recovery of metal ore *is not being conducted.*'' EPA should clarify that an active waste dump is clearly within an area where such work is being conducted. The proposed modification correctly notes the distinction between discharges from active waste rock dumps and inactive dumps. The former are subject to the effluent limitations guidelines and the latter are not.

Response. EPA believes that, as a practical matter, it would be difficult to differentiate discharges from newly placed overburden and existing overburden, especially when placement of overburden is being conducted at existing piles. Importantly, the mere placement of such ''new'' overburden to an existing overburden pile does not automatically make the pile part of the active mining area under the Part 440 regulations.

Comment. The Administrator's decision of February 21, 1979, did not exempt *active* waste rock dumps that *do* drain to a point source.

Response. As noted previously, EPA has struggled to provide meaning to the Administrator's February 21, 1979 decision in light of the appended letter from Mr. Neuman. EPA agrees that the Administrator's decision, to the extent it addresses drainage to a point source, clearly does not provide any basis to presume any exemption from NPDES permit requirements. The Agency does not, however, endorse the negative inference that the commenter draws from the Administrator's decision. Under today's clarification, a discharge associated with the disposal of waste rock and/or overburden would not be subject to regulation under the Part 440 regulations unless it: (1) drains naturally (or is intentionally diverted) to a point source; and (2) combines with ''mine drainage'' that is otherwise regulated under the Part 440 regulations.

VIII. Regulation Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the Agency takes the position that NPDES general permits are not ''rules'' or ''regulations'' subject to the rule making requirements of Administrative Procedure Act section 553, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Agency has determined that the permit modification being published today is not subject to the Regulatory Flexibility Act (''RFA''), which generally requires an agency to conduct a regulatory flexibility analysis of any significant impact the rule will have on a substantial number of small entities. By its terms, the RFA only applies to rules subject to notice-and-comment rule making requirements under the Administrative Procedure Act (''APA'') or any other statute. Today's permit modification is not subject to notice and comment requirements under the APA or any other statute because the APA defines ''rules'' in a manner that excludes permits. See APA section 551 (4), (6), and (8).

APA section 553 does not require public notice and opportunity for comment for interpretative rules or general statements of policy. In addition to modifying the general permit, today's action repeats an interpretation of existing regulations promulgated almost twenty years ago. The action would impose no new or additional requirements.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

For reasons explained in the discussion regarding the Regulatory Flexibility Act, the UMRA only applies to rules subject to notice-and-comment rule making requirements under the APA or any other statute. Today's permit modification is not subject to notice and comment requirements under the APA or any other statute because the APA defines ''rules'' in a manner that excludes permits. See APA section 551 (4), (6), and (8).

Today's permit modification contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Today's modification merely announces an Agency interpretation of existing regulations. EPA has determined that this permit modification does not contain any Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, today's permit modification is not subject to the requirements of section 202 of the UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Because today's modification is based on an interpretation of existing regulations and because EPA anticipates that extremely few, if any, small governments operate mining operations, EPA has determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments.

D. Paperwork Reduction Act

The permit modification contains no requests for information and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. §§ 3501 *et seq.*

Official Signatures

Accordingly, I hereby find consistent with the provisions of the Regulatory Flexibility Act, that these final permit modifications will not have a significant impact on a substantial number of small entities.

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

Dated: July 29, 1998.

Mindy Lubber,

Acting Regional Administrator, Region 1.

Dated: July 29, 1998.

Gregg A. Cooke,

Regional Administrator, Region 6.

Dated: July 18, 1998.

Laura Yoshii,

Acting Regional Administrator, Region 9.

Dated: July 21, 1998.

Chuck Clarke,

Regional Administrator, Region 10.

Final Permit Modification

This permit modification shall become effective on September 8, 1998.

Region 1

Signed and issued this 24th day of July, 1998.

Linda M. Murphy,

Director, Office of Ecosystem Protection.

Areas of coverage	Permit No.
Connecticut Indian Country ..	CTR05*##F
Maine	MER05*###
Maine Indian Country	MER05*##F
Massachusetts	MAR05*###
Massachusetts Indian Country.	MAR05*##F
New Hampshire	NHR05*###
Rhode Island Indian Country	RIR05*##F
Vermont Federal Facilities ...	VTR05*##F

Region VI

Signed this 29th of July, 1998.

William B. Hathaway,

Water Quality Protection Division Director.

Areas of coverage	Permit No.
Louisiana Indian country	LAR05*##F
New Mexico	NMR05*###
Indian country (except Navajo and Ute Mountain Reservation lands).	NMR05*##F
Oklahoma:	
Indian country	OKR05*##F
Oil and gas exploration and production related industries and pipeline industries that are regulated by the Oklahoma Corporation Commission.	OKR05*###F
Texas	TXR05*###
.	
Indian country	TXR05*##F

Region IX

Signed this 24th of July, 1998.

Alexis Strauss,

Acting Director, Water Division.

Areas of coverage	Permit No.
Arizona	AZR05*###
Indian country	AZR05*##F
Federal Facilities	AZR05*##F
California:	
Indian country (Not including Hoopa Valley Tribe).	CAR05*##F
Idaho:	
Duck Valley Reservation ..	NVR05*##F
Nevada Indian country	NVR05*##F
New Mexico:	
Navajo Reservation	AZR05*##F
Oregon:	
Fort McDermitt Reservation.	NVR05*##F
Utah	
Goshute Reservation	NVR05*##F
Navajo Reservation	AZR05*##F

Region X

Signed this 21st of July, 1998.

Philip G. Millam,

Director, Office of Water.

Areas of coverage	Permit No.
Alaska Indian country	AKR05*##F
Idaho:	IDR05*###
Federal Facilities	IDR05*##F
Indian country (except Duck Valley Reservation lands).	IDR05*##F
Oregon Indian country (except for Fort McDermitt Reservation lands).	ORR05*##F
Washington Indian country ...	WAR05*##F
Washington Federal Facilities.	WAR05*##F

1. For the reasons set forth in this preamble, the table published at 60 FR 50897 is modified to read as follows:

TABLE G–4.—APPLICABILITY OF THE MULTI-SECTOR GENERAL PERMIT TO STORM WATER RUNOFF FROM ACTIVE ORE (METAL) MINING AND DRESSING SITES

Discharge/source of discharge	Note/comment
Piles:	
Waste rock/overburden	If composed entirely of storm water and not combining with mine drainage. See Note below.
Topsoil.	
Roads constructed of waste rock or spent ore:	
Onsite haul roads	If composed entirely of storm water and not combining with mine drainage. See Note below.
Offsite haul/access roads.	
Roads not constructed of waste rock or spent ore:	
Onsite haul roads	Except if ''mine drainage'' is used for dust control.
Offsite haul/access roads.	
Milling/concentrating:	
Runoff from tailings dams/dikes when constructed of waste rock/tailings.	Except if process fluids are present and only if composed entirely of storm water and not combining with mine drainage. See Note below.
Runoff from tailings dams/dikes when not constructed of waste rock/tailings.	Except if process fluids are present.
Concentration building	If storm water only and no contact with piles.
Mill site	If storm water only and no contact with piles.
Ancillary areas:	
Office/administrative building and housing	If mixed with storm water from the industrial area.
Chemical storage area.	
Docking facility	Except if excessive contact with waste product that would otherwise constitute ''mine drainage''.
Explosive storage	
Fuel storage (oil tanks/coal piles)	
Vehicle/equipment maintenance area/building	
Parking areas	But coverage unnecessary if only employee and visitor-type parking.
Power plant.	
Truck wash area	Except when excessive contact with waste product that would otherwise constitute ''mine drainage''.
Reclamation-related areas:	
Any disturbed area (unreclaimed)	Only if not in active mining area.

TABLE G–4.—APPLICABILITY OF THE MULTI-SECTOR GENERAL PERMIT TO STORM WATER RUNOFF FROM ACTIVE ORE (METAL) MINING AND DRESSING SITES—Continued

Discharge/source of discharge	Note/comment
Reclaimed areas released from reclamation bonds prior to Dec. 17 1990.	
Partially/inadequately reclaimed areas or areas not released from reclamation bond.	

Storm water runoff from these sources are subject to the NPDES program for storm water unless mixed with discharges subject to the 40 CFR Part 440 that are not regulated by another permit prior to mixing. Non-storm water discharges from these sources are subject to NPDES permitting and may be subject to the effluent limitation guidelines under 40 CFR Part 440.

Note: Discharges from overburden/waste rock and overburden/waste rock-related areas are not subject to 40 CFR Part 440 unless: (1) it drains naturally (or is intentionally diverted) to a point source; and (2) combines with ''mine drainage'' that is otherwise regulated under the Part 440 regulations. For such sources, coverage under this permit would be available if the discharge is composed entirely of storm water does not combine with other sources of mine drainage that are not subject to 40 CFR Part 440, as well as meeting other eligibility criteria contained in Part I.B. of the permit. Permit applicants bear the initial responsibility for determining the applicable technology-based standard for such discharges. EPA recommends that permit applicants contact the relevant NPDES permit issuance authority for assistance to determine the nature and scope of the ''active mining area'' on a mine-by-mine basis, as well as to determine the appropriate permitting mechanism for authorizing such discharges.

2. The fourth sentence in the first paragraph in permit eligibility provision for Storm Water Discharges Associated with Industrial Activity from Metal Mining (Ore Mining and Dressing), Section XI.G.1. (introductory language), previously published at 60 FR 51155, is modified and a fifth and sixth sentence are added to read as follows:

1. Discharges Covered Under This Section

* * * All storm water discharges from inactive metal mining facilities and storm water discharges from the following areas of active, and temporarily inactive, metal mining facilities are the only discharges covered by this permit: waste rock/overburden piles if composed entirely of storm water and not combining with mine drainage; topsoil piles; offsite haul/access roads; onsite haul/access roads constructed of waste rock/overburden if composed entirely of storm water and not combining with mine drainage; onsite haul/access roads not constructed of waste rock/overburden/spent ore except if mine drainage is used for dust control; runoff from tailings dams/dikes when not constructed of waste rock/tailings and no process fluids are present; runoff from tailings dams/dikes when constructed of waste rock/tailings and no process fluids are present if composed entirely of storm water and not combining with mine drainage; concentration building if no contact with material piles; mill site if no contact with material piles; office/administrative building and housing if mixed with storm water from industrial area; chemical storage area; docking facility except if excessive contact with waste product that would otherwise constitute mine drainage; explosive storage; fuel storage; vehicle/equipment maintenance area/building; parking areas (if necessary); power plant; truck wash areas except when excessive contact with waste product that would otherwise constitute mine drainage; unreclaimed, disturbed areas outside of active mining area; reclaimed areas released from reclamation bonds prior to December 17, 1990; and partially/inadequately reclaimed areas or areas not released from reclamation bond. Note: Discharges from overburden/waste rock and overburden/waste rock-related areas are not subject to 40 CFR Part 440 unless it: (1) Drains naturally (or is intentionally diverted) to a point source; and (2) combines with ''mine drainage'' that is otherwise regulated under the Part 440 regulations. For such sources, coverage under this permit is available if the discharge is composed entirely of storm water and does not combine with sources of mine drainage that are subject to 40 CFR Part 440, as well as meeting other eligibility criteria contained in Part I.B. of the permit.

3. The permit is amended to include a new section d. and Tables G–2 and G–3, which would have appeared in the third column of 60 FR 51161, to read as follows:

d. Additional Monitoring Requirements for Storm Water Discharges from Waste Rock and Overburden Piles.

Beginning July 1, 1998, the operator of an active ore mining and dressing facility covered by this permit must monitor the storm water discharges from waste rock and/or overburden piles resulting from mining activities. The operator must conduct analytic monitoring as described below at least twice annually (once between July 1 and December 31, and once between January 1 and June 30) for the duration of this permit. Samples shall be collected from separate storm events a minimum of 3 months apart, except as provided in paragraphs 5.a.(3) (Sampling Waiver), 5.a.(4) (Representative Discharge), and 5.a.(5) (Alternative Certification). Upon notification by the Director, permittees may be required to conduct additional monitoring as necessary to accurately characterize the quality and quantity of pollutants discharged from the waste rock/overburden pile.

All permittees must conduct analytic monitoring once for the parameters listed in Table G–2, and twice annually for any parameters measured above the benchmark value listed in Table G–2. Permittees must also conduct analytic monitoring twice annually for the parameters listed Table G–3 for each of the ore mine categories listed in Table G–3. The initial sampling conducted of Table G–2 pollutant parameters satisfies the requirement for the first sample for any pollutant measurement required by Table G–3.

Permittees must report monitoring results in accordance with paragraph 5.b. (Reporting). In addition to reporting the monitoring requirements for the parameters listed in Tables G–2 and G–3 below, the permittee must report the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previously measurable (greater than 0.1 inch) storm event; and an estimate of the total volume (in gallons) of the sampled discharge.

TABLE G–2.—INITIAL MONITORING REQUIREMENTS FOR STORM WATER DISCHARGES FROM WASTE ROCK AND OVERBURDEN PILES RESULTING FROM MINING ACTIVITY AT ACTIVE ORE MINING OR DRESSING OPERATIONS

Pollutants of concern	Benchmark values
Total Suspended Solids (TSS)	100 mg/L.
Turbidity (NTUs)	5 NTUs above background.
pH	6.0–9.0 standard units.
Hardness (as $CaCO_3$)	no benchmark value.
Antimony, Total	0.636 mg/L.
Arsenic, Total	0.16854 mg/L.
Beryllium, Total	0.13 mg/L.
Cadmium, Total (hardness dependent)	0.0159 mg/L.
Copper, Total (hardness dependent)	0.0636 mg/L.
Iron, Total	1.0 mg/L.
Lead, Total (hardness dependent)	0.0816 mg/L.
Manganese, Total	1.0 mg/L.
Mercury, Total	0.0024 mg/L.
Nickel, Total (hardness dependent)	1.417 mg/L.
Selenium, Total	0.2385 mg/L.
Silver, Total (hardness dependent)	0.0318 mg/L.
Zinc, Total (hardness dependent)	0.117 mg/L.

TABLE G–3.—ADDITIONAL MONITORING REQUIREMENTS (TWICE ANNUAL) FOR STORM WATER DISCHARGES FROM WASTE ROCK AND OVERBURDEN RESULTING FROM MINING ACTIVITY AT ACTIVE MINING OR DRESSING OPERATIONS BASED ON TYPE OF ORE HANDLED

Type of ore mined	Pollutant/parameter		
	Total suspended solids (TSS)	pH	Metals, total
Tungsten Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Nickel Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Aluminum Ore	X	X	Aluminum, Iron.
Mercury Ore	X	X	Nickel (H), Mercury.
Iron Ore	X	X	Iron (Dissolved).
Platinum Ore	.....	.....	Cadmium (H), Copper (H), Mercury, Lead (H), Zinc (H).
Titanium Ore	X	X	Iron, Nickel (H), Zinc (H).
Vanadium Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead, Zinc (H).
Copper, Lead, Zinc, Gold, Silver, and Molybdenum	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Mercury, Zinc (H).
Uranium, Radium, and Vanadium	X	X	Chemical Oxygen Demand, Arsenic, Radium (Dissolved and Total), Uranium, Zinc (H).

NOTE: (H) indicates that hardness must also be measured when this pollutant is measured.

4. The permit is amended to include a new section e., which would have appeared in the third column of 60 FR 51161, to read as follows:

e. Additional Reporting Requirements for Storm Water Discharges from Waste Rock and Overburden Resulting from Mining Activities.

Permittees with active ore mining and dressing facilities shall submit monitoring results for each outfall discharging storm water discharges from waste rock and overburden piles resulting from mining activities, (or a certification in accordance with Sections (3)(a), (3)(b), (4), (5) above) obtained during the reporting period beginning July 1, 1998, and lasting for the duration of the permit. Permittees must submit such monitoring results on Discharge Monitoring Report (DMR) Form(s) postmarked no later than March 31 following the calendar year in which the samples were collected.

5. In addition to the conditions contained in Parts I–XI of this permit, the following requirements are incorporated into Part XII and are placed on permittees located in the listed States, Indian country lands (referred to as ''Federal Indian Reservations'' in the original permit), or Territories to meet applicable Clean Water Act section 401 or Coastal Zone Management Act certification requirements.

Part XII. Coverage Under This Permit

The provisions of this Part provide modifications or additions to the applicable conditions of Parts I through XI of this permit in order to reflect specific conditions required as part of a State, Tribal or Territory Clean Water Act section 401 certification process, or Coastal Zone Management Act certification process, or as otherwise established by the permitting authority. The additional revisions and requirements listed below are set forth in connection with, and only apply to, the following States, Indian country lands, and Federal facilities.

Region I

State of Massachusetts, Except Indian Country Lands (MAR05*###)

The following Massachusetts section 401 certification requirements revise the permit accordingly:

1. Part II.B.8. is added to the permit as follows:

Special Permit Eligibility Requirements for the State of Massachusetts. Discharges covered by the Multi-Sector General Permit must comply with the provisions of 314 CMR 3.00, 314 CMR 4.00, 314 CMR 9.00 and 310 CMR 10.00 and any related policies promulgated under the authority of the Massachusetts Clean Waters Act, M.G.L. c.21, ss.26–53, and Wetlands Protection Act, M.G.L. c.131, s. 40. Specifically, new facilities or the redevelopment of existing facilities subject to this permit must comply with applicable storm water performance standards prescribed by State regulation or policy. A permit under 314 CMR 3.04 is not required for existing facilities which meet State storm water performance standards; an application for a permit under 314 CMR 3.00 is required only when required under 314 CMR 3.04(2)(b) (designation of a discharge on a case-by-case basis) or is otherwise identified in 314 CMR 3.00 or Department policy as a discharge requiring a permit application. Department regulations and policies may be obtained through the State House Bookstore (617–727–2834) or on the Internet at ''www.magnet.state.ma.us/dep''.

2. Part VI.B.3. is added to the permit as follows:

Special Reporting Requirement for the State of Massachusetts. The results of any quarterly monitoring required by this permit must be sent to the appropriate regional office of the Department listed below when the monitoring identifies violations of State Surface Water Quality Standards, 314 CMR 4.00, for any parameter which requires monitoring under this permit. Monitoring results must also be submitted upon request to the Department.

Western Region

436 Dwight Street—Suite 402, Springfield, MA 01103, (413) 784–1100

Central Region

627 Main Street, Worcester, MA 01608, (508) 792–7650

Southeast Region

Lakeville Hospital—Route 105, Lakeville, MA 02347, (508) 946–2700

Northeast Region

10 Commerce Way, Woburn, MA 01801, (781) 932–7677

3. Part IV.B.2.a. is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Availability Requirement for the State of Massachusetts. The Department may request a copy of the storm water pollution prevention plan for any facility covered by this permit to ensure compliance with State law requirements, including State water quality standards. The Department may enforce its certification conditions.

4. Part VII.Q.1. is added to the permit as follows:

Special Inspection Requirements for the State of Massachusetts. The Department may conduct an inspection of any facility covered by this permit to ensure compliance with State law requirements, including State water quality standards. The Department may enforce its certification conditions.

Region VI

State of New Mexico, except Indian Country Lands (NMR05*###)

The following State of New Mexico section 401 certification requirement revises the permit accordingly:

(a) Part I.B.8(a) is added to the permit as follows:

Special Water Quality Standard Requirement for the State of New Mexico. Storm water discharges associated with industrial activity that the New Mexico Environment Department (NMED)/Surface Water Quality Bureau has determined to be, or may reasonably be expected to be, contributing to a violation of a water quality standard are not authorized by this permit. Upon receipt of this determination, the NMED anticipates that the EPA will notify the general permittee within a reasonable period of time to apply for and obtain an individual NPDES permit for these discharges according to 40 CFR 122.28(b)(3).

Federal Indian Country Lands in the State of New Mexico (NMR05*##F)

1. *Pueblo of Isleta* The following Pueblo of Isleta section 401 certification requirements revise the permit accordingly:

(a) Part II.C.1. is added to the permit as follows:

Special NOI Requirement for the Pueblo of Isleta. Copies of NOIs shall also be submitted to the Pueblo of Isleta's Environment Department, Water Quality Program, at the following address concurrently with NOI submission to EPA: Isleta Environment Department, Water Quality Program, Pueblo of Isleta, PO Box 1270, Isleta, New Mexico 87022, Telephone (505) 869–6333 or 3111.

(b) Part IX.B.1. is added to the permit as follows:

Special NOT Requirement for the Pueblo of Isleta. Copies NOTs shall also be submitted to the Pueblo of Isleta's Environment Department, Water Quality Program, concurrently with NOT submission to EPA. Copies are to be sent to the address given in Part II.C.1.

(c) Part IV.F. is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirement for the Pueblo of Isleta. Storm water pollution prevention plans must be submitted to the Pueblo of Isleta Environment Department, Water Quality Program, within 30 days of plan development. SWPPPs are to be sent to the address given in Part II.C.1.

2. *Pueblo of Pojoaque* The following Pueblo of Pojoaque section 401 certification requirements revise the permit accordingly:

(a) Part II.C.1. is added to the permit as follows:

Special NOI Requirement for the Pueblo of Pojoaque. Copies of NOIs shall also be submitted to the Pueblo of Pojoaque Environment Department at the following address concurrently with NOI submittal to EPA: Pueblo of Pojoaque, Environment Department, Route 11, P.O. Box 208, Santa Fe, New Mexico 87501, Telephone (505) 455–2087, Fax (505) 455–2177.

(b) Part IX.B.1. is added to the permit as follows:

Special NOT Requirement for the Pueblo of Pojoaque. Copies of NOTs shall also be submitted to the Pueblo of Pojoaque Environment Department concurrently with NOT submittal to EPA. Copies are to be sent to the address given in Part II.C.1.

(c) Part IV.F. is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirement for the Pueblo of Pojoaque. Storm water pollution prevention plans must be submitted to the Pueblo of Pojoaque Environment Department at least 30 days before a project begins. Case-by-case determinations will be made by the Department to assure compliance with the Pueblo of Pojaque Water Quality Standards. SWPPPs are to be sent to the address given in Part II.C.1.

3. *Pueblo of Sandia* The following Pueblo of Sandia section 401 certification requirements revise the permit accordingly:

(a) Part II.C.1. is added to the permit as follows:

Special NOI Requirement for the Pueblo of Sandia. Copies of NOIs shall also be submitted to the Pueblo of Sandia Environment Department at the following address concurrently with NOI submittal to EPA: Pueblo of Sandia, Environment Department, Box 6008, Bernalillo, New Mexico 87004, Telephone (505) 867–4533; Fax (505) 867–9235.

(b) Part IX.B.1. is added to the permit as follows:

Special NOT Requirement for the Pueblo of Sandia. Copies of NOTs shall also be submitted to the Pueblo of Sandia Environment Department concurrently with NOT submittal to EPA. Copies are to be sent to the address given in Part II.C.1.

4. *Pueblo of Picuris* The following Pueblo of Picuris section 401 certification requirements revise the permit accordingly:

(a) Part II.C.1. is added to the permit as follows:

Special NOI Requirement for the Pueblo of Picuris. Copies NOIs shall also be submitted to both the Pueblo of Picuris Environment Department and Picuris Governor Manuel Archuleta at the following address concurrently with NOI submission to EPA: Pueblo of Picuris, P.O. Box 127, Penasco, New Mexico 87553, Telephone (505) 587–2519.

(b) Part IX.B.1. is added to the permit as follows:

Special NOT Requirement for the Pueblo of Picuris. Copies NOTs shall also be submitted to both the Pueblo of Picuris Environment Department and Picuris Governor Manuel Archuleta at the address given in Part II.C.1. concurrently with NOT submission to EPA.

(c) Part IV.F. is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirement for the Pueblo of Picuris. Copies of storm water pollution prevention plans must be submitted to both the Pueblo of Picuris Environment Department and Picuris Governor Manuel Archuleta at the address given in Part II.C.1. concurrently with plan submission to EPA.

Region X

The State of Idaho, except Indian Country Lands (IDR05* ###)

The following State of Idaho section 401 certification requirement revises the permit accordingly:

1. Part IV.F. is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirement for the State of Idaho. Storm water pollution prevention plan design and associated storm water discharge quality shall demonstrate compliance with applicable Idaho Water Quality Standards and Wastewater Treatment Requirements (IDAPA 16.01.02) through the selection and use of approved and/or reasonable Best Management Practices.

Federal Indian Country Lands in the State of Washington (WAR05* ##F)

1. *Confederated Tribes of the Chehalis Reservation.* The following Confederated Tribes of the Chehalis Reservation section 401 certification requirements revise the permit accordingly:

(a) Part I.B.8(a) is added to the permit as follows:

Special Water Quality Standard Requirement for the Confederated Tribes of the Chehalis Reservation. The permittee shall be responsible for achieving compliance with Confederated Tribes of Chehalis Reservation's Water Quality Standards.

(b) Part I.B.8(b) is added to the permit as follows:

Special Permit Eligibility Requirement for the Confederated Tribes of the Chehalis Reservation. Storm water pollution prevention plans shall be submitted to the Chehalis Tribal Department of Natural Resources at the following address for review and approval prior to discharge: Confederated Tribes of Chehalis Reservation, Department of Natural Resources 420 Howanut Road, Oakville, WA 98568.

2. *Puyallup Tribe of Indians.* The following Puyallup Tribe of Indians section 401 certification requirements revise the permit accordingly:

(a) Part I.B.8(a) is added to the permit as follows:

Special Water Quality Standard Requirement for the Puyallup Tribe of Indians. The permittee shall be responsible for achieving compliance with Puyallup Tribe's Water Quality Standards.

(b) Part I.B.8(b) is added to the permit as follows:

Special Permit Eligibility Requirement for the Puyallup Tribe of Indians. Storm water pollution prevention plans shall be submitted to the Puyallup Tribe Environmental Department at the following address for review and approval prior to discharge: Puyallup Tribe Environmental Department 2002 East 28th Street, Tacoma, WA 98404.

(c) Part II.C.1. is added to the permit as follows:

Special NOI Requirement for the Puyallup Tribe of Indians. Copies of NOIs shall also be submitted to the Puyallup Tribe Environmental Department at the address listed in Part I.B.8(b) at time of NOI submittal to EPA:

Federal Facilities in the State of Washington, Except Those Located on Indian Country Lands (WAR05* ###)

The following State of Washington section 401 certification requirement revises the permit accordingly:

(a) Part I.B.8(a) is added to the permit as follows:

Special Water Quality Standard Requirement for the State of Washington. The permittee shall be responsible for achieving compliance with the State of Washington's Water Quality Standards. These Standards are found in Chapter 173–201AWAC (Water Quality Standards for Surface Waters), Chapter 173–204 WAC (Sediment Management Standards), and the human health standards in the National Toxics Rule (57 FR 60848—60923).

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