



May 10, 2005

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Room 7329G, EPA West
Washington, D.C. 20460

Subject: Public Meeting To Discuss Technical Issues Associated With the National Pollutant Discharge Elimination System (NPDES) Stormwater Permit Coverage for Small Oil and Gas Construction Activities, Docket Number OW-2002-0068; FRL-7897-2, RIN 2040-AE71

The Oklahoma Independent Petroleum Association (OIPA) is providing the following comments in response to the Environmental Protection Agency's (EPA) public meeting notice regarding the National Pollutant Discharge Elimination System (NPDES) Stormwater Permit Coverage for Small Oil and Gas Construction Activities, Docket ID No. OW-2002-068. The OIPA represents approximately 1400 small to large independent crude oil and natural gas producers that will be directly impacted by EPA's proposed actions to address this issue.

We appreciate EPA's willingness to hold a public meeting and to allow the oil and gas industry the opportunity to discuss the impacts of the stormwater permitting requirements on our industry, and to present a more workable alternative (rather than a permit) that would minimize or eliminate the impacts on the oil and gas industry while protecting the environment.

Oil and Gas Exemption Under Section 402(I)(2) of the Clean Water Act. OIPA is a Petitioner in the appeals pending in *Texas Independent Producers and Royalty Owners Association et al. v. EPA* (5th Circuit Lead No. 03-60506) (relating to the scope of the oil and gas exemption) and *Wisconsin Builders Association et al. v. EPA* (7th Circuit Lead No. 03-2908) (relating to the 2003 Construction General Permit ("CGP") and Fact Sheet).

We believe that under the oil and gas exemption in section 402(I)(2) of the Clean Water Act, EPA cannot require permits for oil and gas construction activities, regardless of size, unless the discharge from a site is contaminated. Notwithstanding the foregoing statement, OIPA is providing the following comments.

The Current Stormwater Construction General Permit Would Result In Severe Adverse Energy and Economic Impacts. An independent economic analysis recently completed on behalf of the U.S. Department of Energy estimates that EPA's regulations could cost the country between 1.3 and 3.9 billion barrels of domestic oil production and between 15 and 45 trillion cubic feet of domestic natural gas production over the next 20 years. Compliance costs and lost revenue to the industry could range between \$382 million to \$2,883 million per year from the stormwater permit requirement (with the higher number being characterized by DOE

as a “higher impact scenario” but “not necessarily . . . a ‘worst case’ scenario”). Moreover, these impacts do not include lost reserves, lost tax and royalty revenues, or energy replacement costs, which would increase the estimated impacts to the national economy to \$2,725 million to \$7,883 million per year. A copy of this information can be obtained at www.fe.doe.gov/programs/oilgas/environment/publications.

Waiver Option. We understand that EPA is considering a “waiver” option. We could not support such an option, because the requirement for a “waiver” presumes there is a permit requirement, which is an assumption with which we firmly disagree. The granting of a waiver could be considered a “federal action”, giving rise to objectionable procedures such as Endangered Species Act due diligence and consultation which creates an adverse impact on our industry.

No-Permit Option. If EPA were to propose to regulate oil and gas construction activities without requiring a permit (through section 402 (p)(6)), we could support such an action as long as several conditions are met by EPA.

First, before proposing any such new rule under section 402(p)(6), EPA must consult with affected states (including oil and gas regulatory authorities) regarding whether there is a need (based on scientific evidence) for regulation and to what extent regulation is necessary.

Secondly, section 402(p)(6) and section 402(l)(2) fit together. We do not see how Federal regulation of “uncontaminated” stormwater discharges—which by EPA’s own definition does not contribute to a water quality standard violation—can be legally or scientifically justified under section 402(p)(6). Congress provided for the protection of water quality under section 402(l)(2) by limiting the availability of the oil and gas exemption to stormwater discharged from an oil and gas site that is not “contaminated”. EPA has already defined contamination in 40 C.F.R. § 122.26(c)(1)(iii) to include stormwater discharged from an oil and gas site that contributes to a water quality standard violation (or constitutes a reportable-quantity release). Any non permit regulatory regime under 402(p)(6) must be limited to that which is necessary to control contamination consistent with 402(l)(2).

Common Plan of Development. Any proposal for a non-permit option that would apply to small oil and gas construction activities would need to address the definition of “common plan of development”. The EPA’s “common plan of development” concept provided in its Construction General Permit is not practical for oil and gas construction activities. Oil and gas drilling operations are dependent on the success of one project before the planning and construction of subsequent projects. Data obtained from the initial project can significantly alter the location and/or the initiation of subsequent projects. For the producer, there is no “common plan of development” as compared to residential/commercial construction activities where the full project plan and design is completed prior to project construction. Each individual oil and gas project should be evaluated separately.

Reasonable And Prudent Practices for Stabilization (RAPPS) Can Effectively Manage Stormwater. We recommend that EPA address its stormwater runoff concerns for oil and gas construction activities through a flexible management process rather than a rigid permitting regime. The RAPPS document, developed by industry, provides a compendium of techniques (based on terrain and rainfall) that can be easily utilized to manage stormwater runoff in a practical, cost effective manner while protecting the environment. The RAPPS document is available to industry through OIPA's and numerous other oil and gas trade associations' websites (see www.oipa.com/regulatoryenvironmental.htm).

Once again, we appreciate EPA's willingness to hold a public meeting to allow the oil and gas industry to discuss the impacts of the stormwater permitting requirements on our industry and to present a more workable alternative utilizing the RAPPS document that would minimize or eliminate the impacts on the oil and gas industry while protecting the environment. If you have any questions about these comments, please do not hesitate to contact me at 405-942-2334, x221.

Sincerely,


Angie Burckhalter

V.P. of Regulatory Affairs